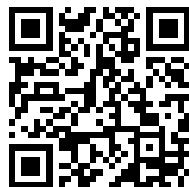

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AUTOMOBILE DEALER FRANCHISES

HEARINGS
BEFORE THE
ANTITRUST SUBCOMMITTEE
(Subcommittee No. 5)
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
EIGHTY-FOURTH CONGRESS
SECOND SESSION
ON
H. R. 11360 and S. 3879

JULY 2, 3, 9, AND 10, 1956

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AUTOMOBILE DEALER FRANCHISES

MONDAY, JULY 2, 1956

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:10 a. m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the Judiciary Committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Quigley, Keating, and McCulloch.

Also present: Representative Crumpacker; Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel; and Thomas M. McGrail, assistant counsel.

The CHAIRMAN. The committee will come to order.

Today the Antitrust Subcommittee commences hearings on H. R. 11360 and S. 3879, the bills offered by the distinguished Senator from Wyoming, Senator O'Mahoney, and myself, measures which are generally referred to as the automobile dealers' "day in court bills." I would point out that S. 3879 with amendments was passed by the Senate on June 19, 1956, by a vote of 75 to 1.

(H. R. 11360 and S. 3879 are as follows:)

[H. R. 11360, 84th Cong., 2d sess.]

A BILL To supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover twofold damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. As used in this Act—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, station wagons, or other automotive vehicles, including any person, partnership, or corporation which acts for such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the agreement, contract, understanding, or arrangement between any automobile manufacturer and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement, contract, understanding, or agreement.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, station wagons, or other automotive vehicles.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

SEC. 2. Any automobile manufacturer engaged in commerce who makes or grants any franchise to an automobile dealer, shall have the duty to act in good faith in all dealings or transactions with such dealer.

SEC. 3. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover twofold the damages by him sustained and the cost of suit, including a reasonable attorney's fee, by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer.

[S. 3879, 84th Cong., 2d sess.]

AN ACT To supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover compensatory damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. As used in this Act—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, station wagons, or other automotive vehicles, including any person, partnership, or corporation which acts for such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the agreement, contract, understanding, or arrangement between any automobile manufacturer and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement, contract, understanding, or agreement.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, station wagons, or other automotive vehicles.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee such other party freedom from coercion, intimidation, or threats of coercion or intimidation, so as to preserve all equities of such other party which are inherent in the nature of the relationship between such parties by such franchise.

SEC. 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover compensatory damages by him sustained and the cost of suit, including a reasonable attorney's fee, by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided*, That in any such suit the manufacturer shall not be barred

from asserting in defense of any such action the failure of the dealer to act in good faith.

Passed the Senate June 19, 1956.

Attest:

FELTON M. JOHNSTON,
Secretary.

The CHAIRMAN. These bills impose upon any automobile manufacturer granting a franchise to an automobile dealer the duty of acting in "good faith" in his relationship with that dealer. More specifically, the bills require the manufacturer to be "fair and equitable" in his transactions with the dealer and "to guarantee the dealer freedom from coercion or intimidation."

Under the bills, if the manufacturer fails to act in "good faith," the dealer is given the right of court review to determine this issue, notwithstanding any provisions of the franchise agreement to the contrary.

Thus, where the manufacturer fails to act in "good faith" either in performing any of the franchise provisions or in terminating, canceling, or not renewing the dealers' franchise, the dealer may bring suit in any district court of the United States where the manufacturer resides or is found, irrespective of the amount in controversy. Under the bill passed by the Senate, the dealer may recover actual damages sustained, as well as the cost of suit, including a reasonable attorney's fee; under the House bill, the dealer may recover double damages.

The Senate bill contains an additional proviso that in any dealer suit, the manufacturer may defend by showing that the dealer failed to act in good faith.

The committee is aware that this bill has evoked sharp controversy. For that reason the committee has invited interested parties, representing all points of view, to testify. The Chair wishes to state that this subcommittee will consider the evidence presented here most carefully indeed, and based on that consideration, will make expeditious recommendations on the pending measures to the full Committee on the Judiciary.

Implicit in these measures is the premise that in the automobile industry concentration of economic power among the manufacturers has proceeded to the point where the ordinary rules of contract law are no longer adequate for the protection of the dealers or the public. There is also the premise that enforcement of the antitrust laws has not adequately coped with this situation.

In the Senate debate on S. 3879, proponents of the bill pointed out that, historically, because of the vastly superior economic position of the manufacturer, dealer franchise agreements have been one-sided and drawn so as to enable the manufacturer to determine arbitrarily the rules by which the dealers conduct their business affairs. For example, it was stated that these franchise agreements have generally provided for termination by either party without cause, or at will, or for causes determinable solely by the manufacturer, regardless of the amount of the dealer's investment.

In short, it was stated, the threat of termination has become a potent weapon in the hands of the manufacturer. The proponents contend that the dealers signing the franchise agreements for all practical purposes have surrendered the right to litigate their griev-

ances. Consequently, it is urged that the present bills are essential in order to remedy this situation by permitting a court review on the issues of good faith despite any provision of the franchise to the contrary.

Those opposed to these bills, on the other hand, argue that the measures constitute special and discriminatory legislation limited solely to the distribution of automobiles. Opponents also state the bills impose fiduciary duties upon automobile manufacturers with respect to their dealers without corresponding obligations being imposed on the dealers toward the manufacturers or toward the public.

It is argued further that under these bills antitrust difficulties arise since the term "equities of the dealer" might well include the dealer's right to be free from competition from added franchise dealers. Opponents contend that even more broadly this phrasing could be read to require a manufacturer to guarantee the dealers against unprofitable operations or depletion of investment and that a sanctuary from the rigors of competition would be provided for the dealers at odds with basic antitrust principles.

Finally, opponents argue that the language of the bills may raise constitutional problems since the bills affect property rights involved in existing contractual relationships.

The committee, in the course of these hearings, will hear arguments on all of these difficult problems.

As the first witness this morning we have the eminent and distinguished Senator from Wyoming, one who has appeared frequently before this committee and to the edification of this committee, Senator Joseph C. O'Mahoney.

STATEMENT OF HON. JOSEPH C. O'MAHONEY, UNITED STATES SENATOR FROM THE STATE OF WYOMING

Senator O'MAHONEY. Mr. Chairman, I want to express my deep appreciation to the Judiciary Committee of the House of Representatives for the gallant fight that it has been making to preserve the American system of political and economic freedom and to acknowledge your generous invitation to me to testify before this committee.

We know that the American system is undergoing a very vital test, not only throughout the world but here at home.

Your committee, Mr. Chairman, in this session of Congress has passed several bills, the purpose of one of them being to prevent mergers which destroy economic freedom. You have reported out and passed through the House an amendment of the Robinson-Patman Act, a law which was written years ago for the express purpose of maintaining competition and preventing its destruction by joint economic power.

In doing this by practically unanimous vote, this committee has allied itself in favor of the free competitive systems established by the founders of the Constitution.

I speak at the risk of repeating generalities which everybody agrees to but which few people, except the members of this committee, have realized are beginning to be lost.

The crisis that we face in the world, the crisis which has compelled this country by joint action of executive and legislative branches to

pass huge appropriation bills for military and foreign aid is directed only at one purpose, and that is to enable the free world to live.

How can the free world live if here at home we continue to permit economic concentration to destroy the opportunity of individuals and small business?

The story is written here so clearly that nobody can misunderstand it. Only a few years ago there were more than a dozen automobile manufacturers. Today there are only 3 that are now hanging on the ropes. The Department of Justice permitted 6 of those companies, a year ago, to merge into 3, thus leaving only 6 companies in the automobile industry in the United States: General Motors, Ford, Chrysler, and then the 3 merged companies. One of these, Studebaker-Packard, is now in such a desperate position that the newspapers tell us almost day to day what is being done to save this company from destruction.

Here is a clipping I tore out of the Washington Times-Herald last Sunday, a week ago yesterday:

PLAN TO AID STUDEBAKER MAY BE REVEALED SOON

DETROIT, June 16 (AP).—Details of an arrangement between Curtiss-Wright Corp. and Studebaker-Packard Corp. to end the financially distressed auto company probably will be announced next week—

and so forth and so on.

How does it happen, Mr. Chairman, that the Studebaker-Packard Co., each of which in its own right only a few years ago was recognized to be a strong, financially sound automobile manufacturing corporation, selling thousands of cars to people of the United States, is now in such a position? How does it happen?

These two companies are now hanging on the ropes. There is now talk in the Government to give them defense contracts so that they can live for a little while.

Are we going to put all of the economy of the United States upon subsidies from Government?

When there is presented to the Congress of the United States for their consideration this bill passed by the Senate, by a vote of 75 to 1, there suddenly bursts out a great campaign from the very headquarters of one of these corporations, the Ford Corp., seeking to prevent the enactment of this law before the end of this session.

Mr. KEATING. Senator, would you mind an interruption—

Senator O'MAHONEY. Not at all, sir.

Mr. KEATING (continuing). Concerning the bill itself—

Senator O'MAHONEY. Well, I am going to discuss the bill itself.

Mr. KEATING. Before you do that, I have this inquiry to make.

Senator O'MAHONEY. Yes.

Mr. KEATING. In the light of your general observations, I wondered what the status of the so-called premerger notification bill—H. R. 9424—is in the Senate Judiciary Committee.

Senator O'MAHONEY. Well, may I ask that my reply be off the record.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. In other words, your subcommittee has approved H. R. 9424; is that right?

Senator O'MAHONEY. No. The subcommittee has been holding some other hearings, and has not yet actually approved it, but we have been

working with the various amendments, which we hope will be acceptable to everybody.

Mr. McHugh, my chief of staff here, has been in conference with your chief of staff, Mr. Chairman, and we are all doing our very best to get the bill completed in a practical way.

In further reply to the question of the Congressman from New York, I want to say that we have had a tremendous burden in the Senate, during the past 2 weeks, revolving around defense appropriations and the Mutual Security Act, which made it necessary for me, as chairman of the Antitrust and Monopoly Committee, to spend much more time upon the floor in debate than I had hoped that I would have had to spend. Therefore it has helped delay the report to the Judiciary Committee of the antimerger bill. My staff has been just literally absorbed, hour after hour and day after day, in the preparation of material dealing with this bill that I am now presenting to you this morning.

Now, returning to this general statement that I would like to make:

When the Constitution was drafted, it was drafted by men who believed that to preserve freedom it was necessary to have a government with divided powers. In order that government might not have the authority to override the people, the framers of the Constitution gave us a Constitution of divided powers under which the Congress was to make the law, the Executive was to carry out the law, and the Judiciary was to handle cases that arose under the law.

But you and I are living in a time when we find that some of the giant centralized corporations want to set up their own judicial system. They want to deny to those who make contracts with them, or think they make contracts with them, the right which the Constitutional Fathers gave them to go into court; and so they appear before us and tell us what a wonderful system they have to handle the dealer-manufacturer relations.

It is a rather curious thing, Mr. Chairman, that on the 18th of June I received a telegram from an individual whose name I do not dare to mention because he is a Ford dealer and because I am afraid that if I did mention his name, he would be subject to reprisals because we are so late in this session now that there is no way of protecting him from reprisals.

When we had the General Motors Corp. before our committee, I exacted from the president, Mr. Harlow Curtice, a promise in public before the committee and before all who attended that no General Motors dealer would suffer any reprisals because of any testimony that he gave. And then we got some testimony.

Now, this is the telegram sent from Dearborn, Mich., on June 18, 1956, to this dealer:

I am inviting some of our key dealers to meet with me, Messrs. Breech, Cruseo, Gossett, and others, in Dearborn on Wednesday, June 20. The urgent purpose of this meeting is to discuss pending legislation affecting all of our interests. Will you please let me know by return wire whether you can attend? The meeting will begin at Dearborn Inn with luncheon at 12:30 p. m., on June 20 and will conclude the same day. All expenses to attend the meeting will be paid by the company. We shall be glad to reserve accommodations and return transportation for you if you so indicate in your reply.

(Signed) HENRY FORD II.

I am sorry I do not have the bill of fare of the luncheon. I do not know what was served or what entertainment was provided, but I do

know that in a day's meeting no satisfactory review could possibly have been made before those dealers who attended of the revelations which have been made by the various committees of Congress which for several years past have been investigating the reason why the concentration of economic power is growing in the automobile industry.

Mr. ROGERS. Senator, would you mind an interruption there?

Senator O'MAHONEY. Not at all.

Mr. ROGERS. This wire was sent out to how many automobile dealers?

Senator O'MAHONEY. It is my understanding that it was sent out to the dealer council, about 125 persons, and in the words of Henry Ford I shall tell you what that dealer council is.

Mr. ROGERS. The members of the dealer council in the respective areas and States?

Senator O'MAHONEY. If the Congressman will pardon me just a minute, I will use Mr. Ford's words, and then there can be no doubt, or no suggestion of misrepresentation.

I have in my hand the published statement by Henry Ford II, president of the Ford Motor Co., before the Subcommittee on Automobile Marketing Practices of the United State Senate Interstate and Foreign Commerce Committee at Washington, D. C., Monday, March 12, 1956, and I am reading Mr. Ford's testimony, in answer to the question of Congressman Rogers of Colorado. This is from page 10 of this document which has been broadly circulated throughout the United States by the company:

Let me tell you briefly how it operates at the Ford Division.

He is talking about the national dealer council.

Members of the Ford Division: Members are elected annually by the dealers on a national basis—

thus showing that this is a national question we are discussing. Mr. Ford tells us:

The members are elected annually by the dealers on a national basis. All of the dealers in each zone who comprise a zone council elect 2 representatives to the district council. The district council in turn elects 2 representatives to the regional council and each of the regional councils elects representatives to the national council. The two representatives elected at each level are generally a small dealer and a large dealer.

Now, observe: We begin with the zone council and then we proceed to the district council and then we proceed to the regional council and then we proceed to the national council.

Now, this is the system of economic government established by the Ford Co. for the Ford division, in the words of Henry Ford II, not my words, not the words of any subversive, not the words of any leftist, not the words of any radical, but the words of Henry Ford, president of the second largest motor company in the United States, one of the Big Two.

Does this have any significance? Well, I am tempted, of course, to read a lot, but I want to conserve your time.

I turn to page 19 to show you the significance of this. Here is the paragraph of Mr. Ford which tells how his mind is working:

I would be less than honest were I not quick to admit that in some instances where the correct implementation of a policy depends upon the action of an individual below the policymaking level, the desired end result can be considerably

altered, even in rare cases to the point of nonrecognition. This can and has happened in our company and we are constantly listening for indications of such a failure, in the—

observe these words—

in the company's chain of command.

Can we preserve a free economy in the automobile industry if we have a chain of command by which the activities of the dealers at the bottom of the chain are controlled from the top? That national council was summoned for the purpose of considering all of the bills. That was on the 20th of June.

As it happened, the Senate bill passed the Senate the day before by a vote of 75 to 1. And so there was quick action. The members of the national council were directed to return to their various districts and talk to the districts and then down through the chain of command went the orders of the high command to tell the dealers to send their telegrams to Members of Congress and tell them how wrong the Congress was, the Judiciary Committee was, in the Senate and in the House, in attempting to preserve some semblance of a free economy in the United States of America.

Down it went, around and around it went, and where it comes out nobody knows.

Except that I know how it came out in New York. And I would like to call the attention of this committee to the story which appeared in the New York Times of yesterday, on page 40, under the byline of Mr. Bert Pierce, headed "Dealers in State Decry Ford Stand."

STATE GROUP PRAISES BILL GUARANTEEING "RIGHTS"—NEW INSPECTION OUTLINED

LAKE PLACID, N. Y., June 30.—Ford dealers objected today to the Ford Motor Co.'s opposition to specified phases of proposed Federal automotive legislation.

The Ford dealers are beginning to get encouraged to stand up against the chain of command, because they find the Judiciary Committees of the Senate and the House and the Members of Congress on the floor speaking out courageously, too, in defense of small business.

I return to the story:

The company attitude was repudiated by the Ford contingent at the closing session of the New York State Automobile Dealers' meeting here.

They asserted that the company had made misleading representations against the O'Mahoney "dealer's right" bill now in Congress. Their position was outlined in a resolution that read, in part:

"Whereas the Ford Motor Co., invited some 125 Ford products dealers to a meeting in Dearborn, Mich. * * * at which time said dealers adopted a resolution against the passage of the O'Mahoney bill; and

"Whereas the New York State Automobile Dealers have passed a resolution in favor of the passage of the O'Mahoney bill: Be it

Resolved, That the Ford products dealers assembled here support the position of the New York State Automobile Dealers in favor of the passage of the O'Mahoney bill."

A copy of the resolution will be sent to Senator Joseph C. O'Mahoney, Democrat, of Wyoming. It will be accompanied by a letter signed by the Ford dealers praising his bill, which provides a dealer the right to sue an automotive manufacturer over cancellation or failure to renew a franchise. The bill has been passed by the Senate and is scheduled for hearings in the House.

The Ford contingent here told the other convention delegates that the 125 dealers who met at Dearborn were not a fair sample of the sentiment. The contention was that if all of the 9,000 Ford products dealers throughout the country were canvassed, the O'Mahoney bill would be unanimously endorsed.

Mr. Chairman, I ask that the entire article be printed in the record, with my remarks.

The CHAIRMAN. It may be included.

(The article is as follows:)

DEALERS IN STATE DECRY FORD STAND—STATE GROUP PRAISES BILL GUARANTEEING "RIGHTS"—NEW INSPECTION OUTLINED

(By Bert Pierce, Special to The New York Times)

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SENT TO O'MAHONEY

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John F. Donnelly, executive deputy commissioner of the motor vehicle bureau, urged the dealers to apply as soon as possible for assignment in the State program of compulsory periodic inspection of motor vehicles. This goes into effect for voluntary procedure my motorists on February 1, 1957, and becomes obligatory January 1, 1958.

"In 1 month or so, we will begin general distribution by mail of application forms along with instructions and procedures," he said. "We hope that you will apply and will do so promptly, because we want to get this program rolling full tilt with actual inspection starting February 1."

An unofficial poll of dealers at the meeting indicated that the curtailing of automotive production at the factories will clear away stocks of 1956 cars before the 1957 models arrive.

Senator O'MAHONEY. How does it happen that such pressures began to move from Dearborn on the eve of the consideration of this bill by the committee?

I might make a suggestion to the committee. I return now to Henry Ford's telegram:

I am inviting some of your dealers to meet with me: Messrs. Breech, Crusoe, Gossett, and others.

If I am correctly advised, Mr. Breech, who used to be a General Motors executive of high command, now has at least two sons who are Ford dealers. One of these has a dealership at Burbank, Calif.; another has a dealership at Winston-Salem.

Senator Monroney told me the other day that he had received some 13 telegrams opposing this bill, all of which came from areas in which, I understand, the relatives of Mr. Breech were Ford dealers.

Now if you had the opportunity to read the hearings of both of these committees, you would find that this nepotism in business is not very different from the nepotism we find in government from time to time. In fact, it is worse.

In many cases high officials in companies that I could name—but it is not relevant here, perhaps, to name them—weep tears because the son of a former president is president of the organization, and is unable, because of lack of ability—not because of his estimate of his own capacity—to carry on the work of the company.

In the days when I presided over the hearings of the Temporary National Economic Committee, we obtained evidence of bureaucracy in the corporate system. This bureaucracy, in the handling of corporations, is the method by which corners can be cut, and the management can be given extraordinary rewards for their activities, the dividends can be piled back into the company so as to build up particular activities in other lines that the management wants to take, and the nonvoting stockholders in many of these corporations, like the nonvoting stockholders of Ford, have to surrender the control of their property to the chain of command, to use again the phrase of Mr. Ford.

The concentration of economic power is proceeding at a rapid rate. This is teaching us in our cities, our counties, and our States that we must also submit to arbitrary power in the conduct of the giant corporations which carry on so much of the work that is done.

Now, Mr. Chairman, nobody is more ready than I to praise the efficiency of the engineers and other executives in both Ford and General Motors and Chrysler. They do a good job. There is no doubt about that—they do a good job. But the fact remains that the boards of directors sitting in complete economic command tell the owners what they must do, and in the case of automobile dealers, tell the dealers what they must do.

And I have here today laid upon the table the evidence from the Ford dealers of New York. And I have other telegrams which have come to my office from dealers who say, "I was compelled to wire opposition, but I cannot speak out, and so I am under inhibition to use the words."

The gist of this bill, Mr. Chairman and members of the committee, is whether or not Congress is going to preserve for the automobile dealers of the United States the opportunity to go into the Federal courts of the United States and seek justice.

Under the system set up by General Motors and by Ford they have no opportunity except to work through the high command.

MR. KEATING. Is that unique in the automobile business?

Senator O'MAHONEY. Oh, I don't think so.

MR. KEATING. The opposition which I have heard expressed to the bill—I want to make it very clear that I have a completely open mind on this legislation, and know very little about it—the opposition which I have heard expressed is that it relates only to the automobile industry, and therefore singles out one industry for special treatment. Would you address yourself to that?

Senator O'MAHONEY. I would be very happy to. Of course, it is doing that. It is taking the first step with the industry in which we have found the greatest concentration. The opposition which comes

to the bill comes from those who do not want Congress to take the first step. They say, "You are dealing with only one industry."

Well, Congress had no trouble in setting up an Interstate Commerce Commission to deal with the railroad problem, and the railroad problem was acute. It had no trouble in setting up the Commission on Aviation, when that became a problem that had to be handled. It has never hesitated to deal with communications separately. Why should it hesitate to deal with that industry in which the greatest concentration has appeared, and where it is clear that the purpose of these two great companies is to make their dealers puppet agents, who spend their own money to build their plants, yet they are deprived of all power to decide what should be done?

Under this system in the automobile industry the dealers have been stripped of control over their own investments. They must take orders.

Mr. ROGERS. Would you pardon an interruption?

Senator O'MAHONEY. Certainly.

Mr. ROGERS. You do not claim that this bill would control the automobile industry at all, do you? What you have in mind is giving to an automobile dealer his day in court on a contract that he thought he had. Isn't that the purpose of the bill?

Senator O'MAHONEY. That is the purpose.

Mr. ROGERS. Unlike a regulated industry, it is not the purpose of this bill, is it, to regulate the automobile industry?

Senator O'MAHONEY. Not at all. It is the purpose of this bill to go back to the constitutional system and free the dealers in America from regulation and control by the high command in private hands.

Mr. KEATING. Let me ask you a question along that line. A representation made to me by a representative of the dealers is that automobile dealers presently are unique in that they do not have the right, which the ordinary citizen has, to go into court and enforce their rights. This bill, it is stated, gives them that right—they speak of it as "a day in court" bill; it gives them the right to go into court, which they did not have before.

Now, I had supposed any citizen or any company had the right to go into court.

Senator O'MAHONEY. Naturally.

Mr. KEATING. If this were the purpose of this bill there would be no question in my mind about my being immediately in favor of it. Would you explain to me what right in court this gives them, which they do not now have?

Senator O'MAHONEY. Yes. The right which this bill gives them, which they do not now have, arises from the fact that the franchises which are issued by the companies are not contracts. There is no mutuality in them; they are contracts terminable at will. We had case after case in which such contracts were terminated.

The CHAIRMAN. May I interrupt at this point? To get to the very nub of this, let's assume that the franchise arrangement is cancelable at will by the manufacturer, and without cause.

Now, if we pass this bill—I am not offering any personal views pro or con; I merely want to get information—we pass this bill and provide that the dealer who is canceled has a right to sue if this cancellation is in bad faith, notwithstanding that the franchise says it can be canceled at will by the manufacturer.

Now, are you violating the constitutional provisions of due process, if you allow dealers to go into court on that basis?

Senator O'MAHONEY. The best answer that I can give to the chairman—

The CHAIRMAN. And also what about existing franchises?

Senator O'MAHONEY. I will answer that question in a moment. But, please don't get me off the question of Congressman Keating. It is a most important one.

I answer it in the words of the Federal court in *Bugg v. The Ford Motor Company*, reported in volume 113 Federal Reporter, second series, at page 618. This was a seventh circuit decision, rendered in 1940. This was a case involving a suit by the dealer in which he sought to enforce what he considered were rights that he had. And this was what the court said:

An examination of the terms—
that is, the franchise—

which are many, indicates that it was dictated by the manufacturer at Detroit and drawn by its counsel, with the avowed purpose of protecting the manufacturer to the utmost and granting, if any, few rights to the smallest possible protection of the agent.

Then there follows this sentence from the circuit court:

It is one which affords some support for the wisdom and the necessity of legislation which protects the weak against a strong party in situations like the instant one.

Now, that is what we are doing. These franchises have been such that when they go into court, the court looks to the dealer and says, "Well, you signed the franchise, you accepted it, you made your own bed, you have got to lie in it."

Now, all we are doing here is to say that if the dealer can show coercion and intimidation of the kind which has been exhibited in all these hearings, if he can show that the big corporation, by reason of its great economic power, can force him into a line of action which is against his free economic will, then he may sue in good faith.

The CHAIRMAN. Now where you have an existing franchise, you now would add something to the contract which wasn't in there before.

Senator O'MAHONEY. No; I think as we drew this bill it is clear—

The CHAIRMAN. Why don't you add something to the contract that wasn't in there before?

Senator O'MAHONEY. I will tell the chairman. This bill does not refer to any past actions. These giant corporations need not be afraid of anything that has transpired in the past; what we are talking about is the future. And I want to call your attention to this fact.

Mr. KEATING. Is there some saving clause in here?

Senator O'MAHONEY. I think it is implicit in the bill.

Mr. McCULLOCH. Mr. Chairman, I would like to ask the witness this: Doesn't the remedy which is proposed in this legislation affect contracts or franchises or agreements which have been heretofore entered into?

Senator O'MAHONEY. The problem that you present, of course, is a matter of legal interpretation.

Now, I have no question in my mind at all about the correctness of the general statement that you have made. The bill creates a new right, that is to sue for damages for acts to be committed in the future.

And I think that we would have no objection to any language in the report or otherwise that will emphasize that matter.

Let me read from the prepared statement :

While the rights of parties created by existing franchises will be affected by this bill, it is difficult to foresee any lack of due process or other constitutional objections to a bill addressed to obvious inequities in existing franchises and which merely enable the dealer to have his day in court.

Mr. McCULLOCH. Is it personal judgment, as a constitutional lawyer, that the bill, as it came from the Senate to the House, does not present any serious constitutional question?

Senator O'MAHONEY. That is my opinion, I would say to you, Congressman.

And I point out that in the report which was sent to our committee by the Department of Justice, there was no emphasis upon constitutional defects in the bill, and when the bill was on the floor of the Senate, in order to make this matter clear, I offered several clarifying amendments.

Mr. KEATING. Well, Senator—

The CHAIRMAN. Senator, pardon me. I want to ask you this plain question. Mind you, I offered the bill myself on this side of the Congress, and I am in deep sympathy with its purpose. Let me ask you this, Senator :

Does this legislation apply to existing franchise contracts?

Senator O'MAHONEY. Let me say to the chairman of the committee that that question was completely settled at the time of the devaluation of gold. Suits were brought—

The CHAIRMAN. Then it does apply?

Senator O'MAHONEY. Pardon me.

The CHAIRMAN. Yes.

Senator O'MAHONEY. Suits went to the Supreme Court, and the Court said that existing contracts were affected, and that is why I acknowledged it. Of course they are affected, but they are affected only where there has been intimidation or coercion or bad faith, as defined in the bill, in the future.

The CHAIRMAN. In other words, the gold clause cases you referred to interpret the welfare clause of the Constitution, if I remember correctly.

Senator O'MAHONEY. Yes.

The CHAIRMAN. And that power was upheld. And similarly you would argue that existing franchises can be modified by addition of the good-faith provision; is that right?

Senator O'MAHONEY. That is right.

The CHAIRMAN. That is your point, then?

Senator O'MAHONEY. That is the point.

I may say this: That I am confident, from what has already happened in the motor industry, that if we pass this bill, there will be very few cases because, when all is said and done, General Motors has indicated a desire to recognize the evils which have existed, and I think that Mr. Ford likewise has recognized those, and they have tried to improve their relationships.

The president of General Motors, on the day that he testified before our committee, stood up before the full committee and the audience, and he said :

I have just sent a telegram to all General Motors dealers that the franchises hereafter will be for 5 years and not for 1.

Now, that was the first step.

Since that time they have made some 17 or 18 concessions, but they do not want the Constitution of the United States to apply because, according to the General Motors release of June 1, William C. Coleman, retired chief judge of the United States District Court for the State of Maryland, has been named General Motors' impartial dealer umpire.

Mr. Curtice is quoted in the General Motors release thus:

The appointment of Judge Coleman marks yet another step in putting into effect the General Motors quality dealer program which I outlined to dealers last March.

He says further:

The new impartial umpire will supersede the dealer relations board of top GM executives which was first organized in 1938. Judge Coleman's years of experience before the bar and as a Federal Judge eminently qualify him for this important task of adjudicating appeals by dealers from decisions of General Motors division.

You see the point, gentlemen of the committee, what General Motors wants is a Judge Landis. Landis was brought into the baseball field after the Supreme Court had said that baseball was a sport and not a business, and so Landis was the dictator.

Mr. KEATING. Senator, may I refer to the constitutional question again?

Senator O'MAHONEY. Yes.

Mr. KEATING. The letter to this committee from the Attorney General states this:

This language may raise constitutional problems. The bill no way limits the time from which damages may run. Thus, for example, dealer-manufacturer contracts presently in force may be held not to "protect all the equities of the automobile dealer" even though the manufacturer complied strictly with present contract firms, he still can be sued by a dealer the way this bill is drawn and be subjected to punitive damages for past actions not illegal when committed.

Now, that constitutional question raises serious problems in my mind, and I wonder if the Senator would have any objection to an amendment to the bill which would make it clear that it applies only to bad faith in future.

Senator O'MAHONEY. I would like, rather, to have that language clearly drawn so as to make sure that the offenses, the coercion, the lack of good faith that appear after the enactment of the law, to amend it in the way that you——

The CHAIRMAN. Pardon me. This matter bothers me considerably——

Senator O'MAHONEY. Let me read this paragraph from the letter of the Deputy Attorney General, Mr. Rogers, dated June 13, which Congressman Keating has just quoted. Finally, he says:

This language may raise constitutional problems. The bill no way limits the time from which damages may run.

I say that the bill becomes effective on the date of its enactment.

Thus, for example, dealer-manufacturer contracts presently in force might be held not to protect all the equities of the automobile dealer——

and so forth.

It "may" and "might."

Mr. McHugh reminds me of the fact that in this letter, this particular paragraph was directed toward the double damages that I had in the bill originally, and it was to clarify this position that I am now stating to you, and to remove that doubt, that I offered my own amendment to make it compensatory damages and not punitive damages.

The CHAIRMAN. Would you accept this amendment—I will have counsel read it—on the question of past and future offenses?

Mr. MALETZ. Referring to H. R. 11360, line 17, on page 3, after the word "manufacturer" add the following: "from and after the passage of this Act"—

Senator O'MAHONEY. Where are you inserting that?

Mr. MALETZ. After the word "manufacturer," sir, on line 17 on page 3 of H. R. 11360.

Senator O'MAHONEY. Yes; I have no objection to that amendment at all.

Mr. MALETZ. That would make it clear, would it not, Senator, that the bad faith to be actionable must occur after the passage of this legislation?

Senator O'MAHONEY. I have no objection to that. That is what I was trying to say—

The CHAIRMAN. That would help a lot.

Senator O'MAHONEY. When I was pointing out that immediately after these hearings began—before Senator Monroney's committee and before the Judiciary Committee of the Senate and your hearings over here in the past; there have been bills introduced for 2 or 3 years dealing with this matter—these concessions began to be made. But if you do not put this law through, the high command can repeal the law.

Mr. MALETZ. Senator—

Mr. McCULLOCH. I would like to ask a question right here, if I may.

Notwithstanding the proposed amendment which I think improves the bill, is it possible that an objection still remains because that which was not wrong, or was not in bad faith prior to the enactment of this act will, after it is enacted, be in bad faith so that this would affect the contract or the franchise that was theretofore in effect?

Senator O'MAHONEY. I do not believe that would be the case at all, and I am confident that so much progress has been made by the manufacturers in avoiding the charges that have been made that they will not repeal or revoke these concessions if we pass this bill. But if we do not pass the bill, they will have the opportunity to withdraw, and I believe that the concessions are so great that we will not have examples of this sort of coercion that was applied to dealers.

And may I say to you that frequently, I have not the shadow of a doubt, some of this coercion took place without the knowledge of the company. It was coercion applied by underlings, zone managers and the like, who wanted to make a good record while they were pushing their sales and who forced upon dealers automobile parts that they did not want, who compelled them to buy seat covers, for example, who compelled them to buy postcards that were not necessary.

Mr. McCULLOCH. Mr. Chairman, I would like to ask the witness, since this is the major objection which we are trying to reach, whether he thinks we are justified in taking this excursion into the economic life

of the Nation which may set a pattern which will extend to every relationship between manufacturer and dealer where such abuses have been found—

Senator O'MAHONEY. Mr. Chairman—

Mr. McCULLOCH. Or do you think that we may remedy these abuses by other means, some of which you have already started in motion, and which have produced a very desirable result, apparently?

Senator O'MAHONEY. Well, I will say this to the Congressman: I believe that the American people as a whole still believe in their Constitution and still believe in a free economy. I am sure that nobody knows better than the members of this committee that the free economy is disappearing. Nobody knows better than the members of this committee and of the Senate Committee on the Judiciary and all of the officers and employees of the Antitrust Division of the Department of Justice that the antitrust laws are not perfect.

Mr. McCULLOCH. Could I interrupt there?

Senator O'MAHONEY. The present Attorney General appointed a special commission to report upon the improvement of these antitrust laws. I am asking you to make this little improvement which will nail down the gains which we are making and which will do no injury to any other industry.

If we are to have a free economy with independent ownership, with a free economy, to the owner of property—

The CHAIRMAN. You must forgive me. We want to finish this bill.

Senator O'MAHONEY. All right.

The CHAIRMAN. Forgive me if I interrupt you because it is to your interest. Today we have to cease these hearings soon after the bells ring because we have a consent calendar to be called; then the school bill, is up to consider for debate. In addition we have very important bill tomorrow before the full Judiciary Committee in the morning.

Unless we can conclude, we will have to hold a night session. I do not want to put the witnesses or the members of the committee to that inconvenience.

Now, I would like to get from you, Senator, if you do not mind, some concise answers if I can get them, rather than going into an economic discourse—and forgive me for saying that. These are some very pertinent questions which are bothering the members of the committee.

I think that we are deeply sympathetic with the purposes of the bill. But there are some constitutional questions that do bother us.

For example, if a manufacturer's factory is located, say in Michigan, Senator—

Senator O'MAHONEY. Now, Mr. Chairman, in justice to myself, may I point out that most of my time thus far has been used in answering questions coming from the members of the committee? And in order that you may have the specific information, may I briefly, without interruption, read you the analysis—

The CHAIRMAN. Senator, I am trying to say, the questions are very important. What you are going to read, we are deeply in sympathy with. Forgive me for saying this, Senator—

Senator O'MAHONEY. No. But they will—

The CHAIRMAN. I have 50 witnesses. How am I going to get through before the session is over?

Senator O'MAHONEY. All right.

The CHAIRMAN. We cannot do it, Senator.

Senator O'MAHONEY. I am at your command, sir, just like a Ford dealer.

The CHAIRMAN. Senator, you know we have an affectionate regard for each other and you know that what I say——

Senator O'MAHONEY. Of course, I know it.

The CHAIRMAN. Does not impinge upon you in the slightest degree. Senator, take a case where the manufacturer's factory is located in Michigan, and the dealer is also located in Michigan. Would the dealer under your bill or mine have the privilege of going into Federal court, or must he go to a State court?

Senator O'MAHONEY. He could go to the Federal court under this bill because he is engaged in a business that affects interstate commerce.

Mr. MALETZ. Senator, the committee understands that this bill is designed to supplement the antitrust laws——

Senator O'MAHONEY. Right.

Mr. MALETZ. And not modify, repeal, or supersede the antitrust laws in any way.

Senator O'MAHONEY. That is right. And it does not.

Mr. MALETZ. What would be your reaction, sir, to adding a new section which says that specifically, a section which would read as follows:

"No provision of this act shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws."

Senator O'MAHONEY. I have no objection whatsoever.

The CHAIRMAN. Fine. That is excellent.

Senator O'MAHONEY. I do not believe it is necessary, but I am very happy to accept it.

Mr. MALETZ. Would that—excuse me, Mr. Chairman.

The CHAIRMAN. There is one more question I want to ask, because I have had an avalanche of telegrams on it. Does the phrase "automotive vehicles" include tractors, harvesters, combines, other agricultural equipment, roadbuilding equipment, trucks, buses, power lawn mowers, motorcycles, motorscooters, and motorized bicycles?

Senator O'MAHONEY. We are dealing here with vehicles for transportation. That question was asked of me by Senator Aiken of Vermont. He said he frequently had seen two people riding on a power lawn mower, and I assured him that we were not planning to take the power lawn mower into consideration.

The CHAIRMAN. It is only transportation vehicles?

Senator O'MAHONEY. Transportation.

Mr. MALETZ. Senator, just a few more questions, if I may, with respect to this bill.

In H. R. 11360, page 2, line 3, after the word "for," what would be your reaction to adding "and is under the control of"? And the reason for that suggestion is——

Senator O'MAHONEY. Will you repeat that?

Mr. MALETZ. Yes, sir. After the word "for" in line 3, page 2, adding "and is under the control of." The reason for that suggestion is a Department of Justice comment that a corporation which may not be under an automobile manufacturer's control——

Senator O'MAHONEY. Oh, certainly. As a matter of fact, in the statement I was to read, I was making that suggestion.

Mr. MALETZ. Yes, sir. I take it that that addition would not be objectionable to you, Senator.

Senator O'MAHONEY. Not at all; not at all.

Mr. MALETZ. The next suggestion is this. As you know the Department of Justice has objected very vigorously to the language on page 3, line 2, the language beginning with the word "and"—

and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

Now, the Department of Justice has stated that under one possible construction of that clause, the automobile manufacturer might be precluded from franchising a new dealer in an area served by an existing dealer.

My question is, whether you would object to striking out that clause beginning with "and" on line 2 and going down to "manufacturer" on the basis that that is covered by the term "fair and equitable" on line 25 of page 2.

Senator O'MAHONEY. Again, this is treated in the prepared statement that I wanted to present, and which I will ask permission to print in the record. But I believe that that amendment is not at all necessary. There is nothing in this bill that would prohibit a manufacturer from setting up a new dealer in any area; there is nothing whatsoever in the bill that would do it.

Mr. MALETZ. Senator, let me ask these questions, to underscore the possible necessity for eliminating that clause.

Does the term "equities of the automobile dealer" include the right not to have the manufacturer authorize a new dealer in the same territory if the new dealer does not agree to invest the same amount of capital as the present dealer? Does it also include the right not to have the manufacturer supply other dealers more automobiles than the national average or market penetration estimates?

As I am sure you recall, the Department of Justice letter to the committee, which is similar to the letter which Mr. Rogers sent to you, states as follows, quoting from page 2:

Also specified by section 1 (e) as part of the manufacturer's good faith obligation is the duty to "protect all the equities of the automobile dealer" which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer. Antitrust difficulties here, too, are immediately apparent. In the light of automobile industry history, for example, the term "equities of the dealer" might well include the dealer's right to be free from competition from added franchise dealers.

As I understand it, one major automobile manufacturer's policy is now to permit appeal to its dealer relations board from any sales manager's decisions which affect "the equities of the dealer." Within this language, appointment of an additional dealer in a dealer's area has consistently been deemed a matter warranting appeal. Appointment of added dealers in an area, however, is but one normal competitive means for securing better distribution.

As a result, this language might deprive newcomers of their fair chance to enter the auto-dealer business and, in the process, seriously restrain distribution of new cars.

Even more broadly, this phrasing could be read to require a manufacturer to guarantee against a dealer's unprofitable operation or depreciation of investment. The report on the companion Senate bill, for example, emphasizes throughout their bill concern for the dealer's franchise investment. After remarking on the "substantial investment of his personal fund by the dealer in the business," the

report, on page 2, states, "The dealer becomes, in a real sense, the economic captive of the manufacturer." Building on this analysis, the report concludes (p. 5) :

"The economic facts underlying the relationship between manufacturer and dealer justify the imposition upon the factory of duties of a judiciary or quasi-judiciary character.

"Under the circumstances, it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character."

Against this background it seems reasonable to conclude that the Senate committee at least intended that dealers' "equities" include some safeguard for dealers' margins of profit or investments. Section 3 would apply this standard to any "terminating, canceling, or not renewing" of a dealer's franchise. Any failure to renew, it seems clear, might drastically deplete a dealer's investment. Similarly, an increase in auto production might mean harder competition among dealers but a lower return for any one dealer. From this it follows that H. R. 11360, like its counterpart, as introduced in the Senate, could apply to a manufacturer—I repeat—on payment of double damages, to gear his production and distribution, to preserve each dealer's profitable investment.

Thus, building for dealers a sanctuary from the rigors of competition seems at odds with basic principles of antitrust. It could effectively prevent manufacturers from responding with production or price changes to the stimuli of a free market. The result might be artificially to re-create, as a permanent condition in the retailing of automobiles, postwar shortages and prices, still fresh in the minds of many. Completely justified would be that public interest in more and better products, as well as rival distribution methods, which competition is meant to safeguard.

Finally, this language may raise constitutional problems. This bill in no way limits the time from which damages may run. Thus, for example, the dealer-manufacturer contracts presently in force might be held not to "protect all the equities of the automobile dealer." Even though the manufacturer complied strictly with present contract terms, he still could be sued by a dealer—the day this bill became law—and subjected to punity damages for past acts not illegal when committed.

Certainly the Department of Justice's objection would be obviated to a considerable degree if this language that I mentioned were taken out of the bill. The bill still would give the dealer a right to sue in the event the manufacturer acts unfairly or inequitably, or if the manufacturer coerces, intimidates, or threatens to coerce or intimidate the dealer. Wouldn't that language be sufficient to cure the evils about which you so eloquently testified?

Senator O'MAHONEY. I would like to consider its effect. It is impossible, of course, to subject the legal effect of language presented in the give-and-take of the hearing. But in order to make clear to the committee that we have felt that there is no basis for that language used by the Department of Justice, I want to read to you, if I may, just a page from the prepared statement :

Because the bill's broad definition of "good faith" involving the duty to, as this letter states, "protect all the equities of the automobile dealer which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer," the Department foresees antitrust difficulties. It feels that this language would give the dealer a right of action whenever the manufacturer appointed an additional dealer within a dealer's area, since such action would reduce his equities.

Thus, the department concludes this language might "deprive newcomers of their fair chance to enter the auto dealer business and in the process seriously restrain distribution of new cars."

Let me make it perfectly clear that it was never the intention under this bill to prevent the manufacturer from obtaining wider distribution by the appointment of new dealers, whether or not they sold within any dealer's "zone of influence." Careful reading of the bill will indicate that the dealer obtains no such right of action.

Every action which reduces the dealer's equity does not give rise to a cause of action under this bill. The dealer is able to sue only where the manufacturer

did not act in good faith in (1) terminating the franchise, (2) not renewing the franchise, and (3) performing or complying with the terms of the franchise. Therefore, the establishment of a new dealership by the factory, thus providing more competition for the dealer, would not give the dealer a right of action under this bill. It is probable that the Department's misconception of the bill stemmed from a reading of section 2 which affirmatively imposed the obligation upon the manufacturer to act in good faith, without reference to the situations in which the dealer can bring suit. Therefore, on the floor of the Senate, I proposed an amendment deleting the original section 2 in its entirety in the hope that certain confusion would thus be eliminated.

The CHAIRMAN. That is section 2 on page 3?

Senator O'MAHONEY. That was of the original bill, yes, and it is in H. R. 11360, beginning at line 6 and ending at line 9. We struck that out, and it is a perfect answer to the question raised by the Department of Justice, I think.

Mr. MALETZ. Sir, just one more question with respect to possible clarifying amendments.

Referring to line 25, page 2 of the bill, 11360, what is your reaction to the following change?—

* * * to act in a fair and equitable manner toward the dealer——

Senator O'MAHONEY. What is that, "toward the dealer," you said?

Mr. MALETZ. Yes, adding the words "toward the dealer" and striking out "and nonarbitrary manner" and inserting "and" so as to read:

* * * and to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation——

and add "from the manufacturer."

Senator O'MAHONEY. Do I understand that the language you propose is that, beginning on line 23, page 2 of H. R. 11360 shall read:

(e) The term "good faith" shall mean the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair and equitable manner toward——

Mr. MALETZ. "Dealer."

Senator O'MAHONEY. "Toward the dealer"?

Mr. MALETZ. Yes, sir.

Senator O'MAHONEY (reading):

* * * and to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation.

Mr. MALETZ. "From the manufacturer."

Senator O'MAHONEY. "From the manufacturer"?

Mr. MALETZ. Yes.

Senator O'MAHONEY. "From the manufacturer" goes in where?

Mr. MALETZ. Right after the word "intimidation," line 2 on page 3. That is clarifying, for the purpose of making——

Senator O'MAHONEY. Well, there are two things that I want to say about that.

In the first place, I cannot understand why the word "nonarbitrary" should be eliminated.

The CHAIRMAN. What does that add to "fair and equitable"—that is, "nonarbitrary," what does that add?

Senator O'MAHONEY. Well, it just emphasizes what we are driving at, and when you take it out the courts might construe it to mean more than you intend to.

The CHAIRMAN. There must be an additional reason, Senator.

Senator O'MAHONEY. We changed this Senate bill on the floor and made the section (e) read as follows:

The term "good faith" shall mean the duty of each party—"each party"—you notice—

to any franchise, all officers, employees or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee such other party freedom from coercion, intimidation, or threats of coercion or intimidation so as to preserve all equities of such other party which are inherent in the nature of the relationship between such parties by such franchise.

The CHAIRMAN. To make it mutual; is that it?

Senator O'MAHONEY. To make it mutual, yes.

Now, if you want to make any suggestions for a further modification, and it is important that we should modify it if it needs modification—because again I emphasize that what I seek to do and what the Judiciary Committee sought to do, and what I explained to the Senate was the objective of the bill, it was to create an atmosphere in which there could be under law, made by the Congress, a more equitable atmosphere between the manufacturer and the dealer.

The CHAIRMAN. One more last question, and then I am through with my questions.

Is there any fear that if a bill like this goes through, that the manufacturers of cars might set up their own retail distributing outlets?

Senator O'MAHONEY. Well, of course, I cannot predict what the manufacturers might take into their heads to do, but that would be such an obvious violation of the protestations that they make of supporting the dealer as a free enterpriser, and it would so completely emphasize the concentration which in fact exists in economic power that I don't think that there would be any danger of it at all.

I think that it is one of those rationalizations which has been set up in an attempt to raise fears, to persuade this committee not to approve this bill.

I say to the committee what you all know, that there has never been a day since the first Congress assembled and attempted to regulate commerce, exercising the powers granted to it by the Constitution, that business has not resisted every attempt to exercise this constitutional power.

I think that I have told this committee of the illustration that tells the story perfectly:

After the Interstate Commerce Act was passed, a great lawyer from Massachusetts, Richard Olney, was attorney for the Chicago, Burlington & Quincy Railroad. The law had been passed by a non-partisan action, just as we acted in the Senate, nonpartisan, because the members of the Senate knew what the trouble was.

After that bill had been passed unanimously, the president of the Chicago, Burlington and Quincy was annoyed because of what the Interstate Commerce Commission was doing and he wrote a letter to Mr. Olney and asked Mr. Olney to prepare a campaign to repeal the law.

Olney replied to him—and I think I should remark for the benefit of my friends who are sitting on the Republican side here, that Rich-

ard Olney afterward became Secretary of State under Grover Cleveland—he replied to his client and he said:

I advise you not to attempt to repeal the law, not to make any attempt, because if you make the attempt you will fail and probably make the law worse from your point of view than it is now. The only course—

he then went on to say, and I am now quoting his exact words—

your only course is to pay more attention to recommending nominees to sit on the Interstate Commerce Commission who understand the railroad business and you will have much better success.

And from that time on, of course, the railroads have been making recommendations of nominees for seats on the Interstate Commerce Commission.

The CHAIRMAN. Senator, how long after the manufacturer has shown bad faith may the dealer sue? In other words, should there be a statute of limitations written into the bill?

Senator O'MAHONEY. In this statement which I am reading in little bits and pieces, I suggest perhaps that you might wish to amend the bill to provide a uniform statute of limitations. I do not know that you do.

The CHAIRMAN. How long would you suggest?

Senator O'MAHONEY. I think 4 years is appropriate. It appears in the recent amendment of the antitrust laws.

Now, may I be excused?

Mr. McCULLOCH. I would like to ask you this question, if I may, Senator.

Senator O'MAHONEY. Surely.

Mr. McCULLOCH. I would like to start off by saying that, like my very able colleague, Mr. Keating, I have come here to learn about this important problem. I have been reading about it and I have been listening with great interest to your presentation this morning. I have been impressed by your presentation by reason of the fact that I think that you are advocating a policy in the solution of this problem that is novel to me at least. This same problem exists, only, perhaps, in a little difference of degree, in several activities in this country.

Let me finish, Senator, and then I will be glad to hear what you have to say. A similar problem exists in the farm implements business, where the relationship is almost identical; another is in the home appliance field, yet another in the auto accessories field. Perhaps we may be establishing a precedent for all of these fields, and all of the economic activities of the country including the real estate field, so that one who is being dealt with at a temporary disadvantage may be in a position to call upon the Federal Government to protect him in his contractual relationship with a corporation who temporarily may be in the ascendancy.

Senator, have you considered all of the ramifications in these fields, even down to and including the real-estate field, by this approach?

Senator O'MAHONEY. I have, indeed.

Mr. McCULLOCH. Even the real-estate field?

Senator O'MAHONEY. Even in the real-estate field. I don't think it will touch real estate.

This, may I say, is the situation with which we are confronted and in which we find ourselves—all I am suggesting is a resort to the constitutional right of a citizen to have a redress of grievances in the courts when he thinks that he has a case.

I point out to you again that the economic situation of our country today is in such form that the small man, the local man, is no longer able to defend himself because he does not have the economic power. The courts are full of cases in which, speaking of these very contracts, they say that the economic balance is out of adjustment and ought to be remedied, and one court which I quoted this morning said that it ought to be remedied by legislation.

Now, wherever you see an industry that is so big, so concentrated, as the automobile industry is, then is the time not to create more government by creating more bureaus, as we have been doing, but by returning to the American way and giving the person, the individual, the corporation, which finds itself to be deprived of its right, an open door to go into the courts.

Now, because we have not done this in the past, you have found a private economic government taking over, and you have found big government rising.

I have repeated almost every day since I first introduced the resolution on the Temporary National Economic Committee, that whenever—and I have repeated this—whenever the question has arisen, that my position is not to give more power to the Central Government, but to create more opportunity for the individual, for the people living in the States, in the counties, in the communities—in short, I want to free them not only from rules and regulations which are imposed upon them by the Government but I want to free them from rules and regulations imposed upon them by the chain of command in big industry.

Mr. McCULLOCH. Now, Senator, may I conclude from what you have just said in response to my long question, that in view of your great experience and learning in this field, you are ready, willing, and anxious to embark upon this proposed solution of the problem?

Your answer, I take it, is "Yes"?

Senator O'MAHONEY. Yes, it is.

Mr. McCULLOCH. All right.

Then one more question, and then I will have no more questions—

Senator O'MAHONEY. Let me answer you fully, Congressman. Because unless you do, you cannot avoid the tendency toward totalitarianism, and when you have totalitarianism in giant business, then you are bound to have it eventually in government.

That is what happened in Europe; you are staring it in the face in this country.

So to preserve American freedom of economy and of politics, you have got to make the people free from concentrated authoritarian control in industry.

Mr. McCULLOCH. This is my final question. We have been talking, of course, all morning, about the automobile dealers and manufacturers.

Will this legislation cost the users of the automobiles more money over a reasonable period of time? Are the users, are the consumers, represented in the thinking in this legislation?

Senator O'MAHONEY. I do not think it would influence the cost of cars a bit.

Mr. McCULLOCH. That is all, Mr. Chairman.

Senator O'MAHONEY. I am very grateful to the committee for the patience with which it has indulged me this morning. Thank you very much.

The CHAIRMAN. We are very grateful to you for your patience, too. And you may have the privilege of putting your statement in the record, sir.

Senator O'MAHONEY. Thank you, Mr. Chairman.

(The prepared statement of Senator O'Mahoney is as follows:)

STATEMENT OF HON. JOSEPH C. O'MAHONEY, A UNITED STATES SENATOR FROM THE STATE OF WYOMING, IN SUPPORT OF S. 3879 AND H. R. 11,360, PROVIDING A "DAY IN COURT" FOR THE AUTOMOBILE DEALERS

There has developed in the United States a situation which is becoming more and more widespread and better and better understood—a situation whereby a comparatively few manufacturers hold a position of power in dealing with small businesses throughout the United States. The automobile industry is in such a situation. The few automobile manufacturers have a disproportionate economic power and they hold almost complete control over the activities of the small automobile dealer.

This has been revealed in the investigations conducted in 1955 by Senator A. S. Mike Monroney, of Oklahoma, for the Automobile Marketing Subcommittee of the Senate Committee on Interstate and Foreign Commerce and by myself for the Senate Judiciary Subcommittee on Antitrust and Monopoly. It was clearly demonstrated that automobile dealers throughout the country have for years been completely under the actual control of the manufacturers and that they have been subjected to coercion and intimidation which have deprived them of economic freedom.

The substantial investment by the dealers of their own personal funds in the business, the inability to convert easily the existing facilities to other uses, the dependence upon a single manufacturer for supply of automobiles, and the difficulty of obtaining a franchise from another manufacturer, have all contributed toward making the dealers economic pawns of the manufacturer.

Dealers have found that courts are not instruments of protection from arbitrariness and coercion on the part of manufacturers. This in itself is an inequity. But of even greater import is that an entire industry is affected by the franchise governing the relationship between manufacturer and dealer.

It is, the automobile dealer who is the link between the consumer and the vast industrial structure required to produce the automobile. Control of the dealership is, therefore, not only a control of an individual businessman, but control of an industry structure. Every supplier and distributor in this industry is affected by this control over the retailer of the industry product. Every producer of automotive parts, every wholesaler, every jobber, operates his business with the knowledge that his market is affected by the control over distribution exercised by the automobile manufacturers. Every potential manufacturer of automobiles knows that entry into this industry is virtually impossible because of the difficulty in creating a dealership organization. This in itself has contributed to the decline in the number of producers in this industry.

In studying the structure of this industry, I have become convinced that the stranglehold these corporations have at this one strategic link in our industrial economy, the dealership, is decisive. Control over outlets for automobiles, parts and accessories is control over the entire industry.

Once the dealer is economically committed to a single manufacturer, he has no practical choice but to accept any terms the manufacturer imposes. The automobile dealer franchises historically have been drawn by the manufacturer in such a way as to give him maximum control over the operation and management of the dealer's business without assuming any obligation therefor.

While franchises among manufacturers differ and have been the subject of various changes over the years, they have generally provided for termination by either party without cause, or at will, or for causes determinable solely by the manufacturer. It is clear that control over the dealership comes from the threat of cancellation. Though these franchises appear to be bilateral in form, they have been unilateral in fact. In various ways the manufacturers have impressed clauses in the franchises to exempt them from all legal liability to their dealers. The franchises, drawn by the manufacturers, are designed to give maximum legal and economic protection to the manufacturer's interests.

Dealers seeking redress for grievances under these franchises found themselves effectively foreclosed in attempting to bring suit upon the franchises. Courts have sustained the manufacturers' claims that the agreement between

manufacturer and dealer are not legal contracts, contain no mutuality, that the dealer cannot recover damages and that the factory has the right to terminate at will. The terms of this one-sided document compelled the courts to conclude that, however inequitable the consequences, the dealer executing such a franchise had, for all practical purposes, surrendered his right to litigate his grievance. This has been the prevailing view of both the Federal and State courts in passing upon suits filed by dealers under the franchises.

Automobile manufacturers have imposed their own private judicial system to settle disputes with dealers. This is a system wholly out of harmony with the traditional American system of adjudicating conflicts arising out of contracts. It is a system which, if followed by all big business would have destroyed completely the procedure established under the United States Constitution for the adjudication of such problems. It is the franchise together with this private judicial system which has made the dealers independent in name only and has deprived them of the right to sue for justice in the courts established under the Constitution of the United States.

The hearings dealing with General Motors last fall highlighted the one-sided character of the franchise. These hearings revealed that the automobile manufacturers have used their superior power and bargaining strength with individual dealers so as to require dealers, as a condition of doing business, to enter into one-sided agreements.

Dealers who testified before the Senate subcommittee offered many examples of the coercive power of the manufacturer. A dealer in Portland, Oreg., related that General Motors expressed dissatisfaction with the number of salesmen employed. He doubled his sales force and opened another used-car lot. Nevertheless, operating under the terms of a 1-year franchise, General Motors refused to renew at the expiration of the term.

Another dealer in Savannah, Ga., testified that he was forced to make a \$100,000 addition to his building, to order cars with accessories, and to take advertising literature against his wishes. He, too, did not have his franchise renewed.

At Lake Orion, Mich., a dealer publicly criticized General Motors. His three franchises were not renewed.

A Mobile, Ala., dealer charged that he was ordered to construct a body and paint shop and accept cars equipped with accessories which he did not want. Great pressure had been exerted upon dealers to accept automobiles, parts, accessories, and supplies which they did not need, did not want, or did not feel their market was able to absorb. Another dealer testified that he was induced to register cars falsely.

This list can be extended almost endlessly. The testimony of these dealers demonstrated beyond a doubt that the factory was able successfully to engage in such coercive practices through the threat of termination or nonrenewal of the franchise, safe in the knowledge that whatever action it took the dealer could not obtain court review.

The automobile manufacturers have made it plain that they want no impartial United States court sitting in judgment between themselves and their dealers.

Mr. Hufstader, vice president of General Motors, in commenting on the franchise stated:

"It is the manufacturer who creates the franchise in the first place. Hence, he should be in the position to dispose of it * * *

"This ability to dispose cannot in any sense be shared with the dealer. The manufacturer must be in a position, based on his judgment and on his judgment alone, to retain a franchise, to grant it, or to withdraw it" (vol. VII, p. 3681).

The manufacturers seem to feel that Congress should not pass a law opening the doors of the Federal courts to the determination of issues which are clearly within the authority of Congress under the Constitution. The result of this bill will be, in my judgment, to promote a new era of much better feeling than has ever before existed in the industry. Unless the doors of the Federal courts are opened to the automobile dealers they will continue to remain the pawns of the manufacturers.

S. 3879 and H. R. 11360, introduced by the distinguished chairman of this committee, opens the door of the Federal courts to the local dealer. It provides a system under the United States Constitution which will deal justly with the manufacturer and the dealer. It gives the Government no control over the franchises.

This bill imposes a duty of good faith upon all parties to the franchise. It provides that a dealer may bring suit in any district court of the United States

where the manufacturer resides, or is found, or has an agent and, without respect to the amount in controversy, shall recover compensatory damages sustained by reason of failure of the manufacturer to act in good faith:

- (1) in performing or complying with any of the terms or provisions of the franchise, or
- (2) in terminating, canceling, or not renewing the franchise with said dealer.

You will note that the Senate struck from the original bill the provision for double damages. I feel that on balance, this is a justifiable amendment.

Criticism was made on the Senate floor that the bill was one-sided and did not properly recognize the rights of the manufacturer. While it did not appear to be necessary to give the manufacturer additional rights, as the manufacturer seldom, if ever, sues a dealer, I agreed to amendment of the bill:

- (1) to impose the duty of acting in good faith upon both the dealer and the manufacturer; and

- (2) to provide that the manufacturer is not barred from asserting in defense of any such action the failure of the dealer to act in good faith.

This bill does not prohibit the manufacturer from terminating or refusing to renew the franchise of a dealer who is not providing the manufacturer with adequate representation. As in all acts under this bill, the dealer would have the burden of showing absence of good faith by the manufacturer.

A wholly new right of action is created by this bill in enabling a dealer to bring suit to test the good faith of the manufacturer who refuses to renew at the expiration of the franchise. This bill would not, of course, permanently bind a manufacturer to his dealer. The dealer, in case of nonrenewal, has no right to require continuance of the relationship. He merely has a right to damages if the manufacturer failed to act in good faith in refusing to renew the franchise.

While arbitrary termination and nonrenewal are the chief abuses at which this bill is aimed, failure of the manufacturer to exercise good faith in conforming or complying with provisions of the franchise are also actionable by the dealer during the life of the franchise. It is expected that the courts will be equally zealous in requiring good faith of the manufacturer under provisions of the franchise vital to the dealer's livelihood, such as his ability to obtain delivery of the type and volume of cars ordered.

During the course of the debate in the Senate, questions were raised concerning the effect that this bill would have on existing franchises. There seems to be some confusion on this matter. While it is true that this bill has no retroactive effect, and only future acts of bad faith are actionable under this bill, it is clear that the bill will affect rights and obligations under presently existing franchises.

The concept of good faith is not novel in our system of jurisdictional prudence. Ordinarily at law, buyers and sellers deal with each other at arm's length. Courts will measure the responsibilities of such parties in the terms of the contract entered into between them. Unless the relationship between the parties involves duties which are fiduciary in character, the courts will not impose upon the parties a duty of good faith. In the absence of fraud, duress or mistake, courts will enforce the bargain as made, however harsh or inequitable the result.

However, it has been held that a fiduciary relationship exists in every case where, in fact, trust and confidence are reposed by one person in another who, as a result thereof, gains influence and superiority over the other. In such situations, there is a duty on the dominant party to show good faith. While such relationship seems to characterize the dealings between manufacturers and car dealers, nevertheless courts have been loath to require a duty of good faith on the part of the manufacturer.

The good faith concept therefore is not new; it had its origin in early history of our law, when in a dispute over a contract the courts looked beyond the terms of the contract which the parties had made when it appeared that one of them was "obligated" to sign. When this situation arose, the courts applied the principles of equity in order to protect the party which had been subject to coercion. The franchises in existence today are, without doubt, executed in a context of unequal bargaining positions. Once the dealer has accepted the first franchise he is not longer a free bargaining agent—he is in a position of no retreat unless he wants to lose a substantial part or all of his investment. His future existence is measured by the "good faith" of the manufacturer. It has been clearly shown that the manufacturer has violated this principle of good faith in its relationship with dealers. Under this bill, the dealer obtains his day in court to test the manufacturers' good faith.

The Department of Justice addressed a letter to me dated June 13, 1956, in opposition to this bill. I should like to comment on some of the major criticisms contained in that letter.

The objection is made that "the manufacturer is made liable for 'coercion, intimidation or threats of' same not only by himself but also, for instance, by his distributors, whether or not they are subject to his control." This result, it is argued, stems from the definition of manufacturer. This is a valid objection. A manufacturer should not be responsible for the conduct of persons over whom he exercises no control. The reason for the broad language in the definition of manufacturer was to forestall the manufacturer from escaping the consequences of this bill by establishing a sales corporation which would enter into franchise agreements with dealers. I would suggest that the House consider an amendment making clear that the factory shall be liable only for the conduct of persons over whom it has control and for whose conduct it is responsible.

Because of the bill's broad definition of "good faith" involving the duty to, as this letter states, "protect all the equities of the automobile dealer which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer," the Department foresees antitrust difficulties. It feels that this language would give the dealer a right of action whenever the manufacturer appointed an additional dealer within a dealer's area, since such action would reduce his equities. Thus, the Department concludes, this language might "deprive newcomers of their fair chance to enter the auto dealer business and in the process seriously restrain distribution of new cars." Let me make it perfectly clear that it was never the intention under this bill to prevent the manufacturer from obtaining wider distribution by the appointment of new dealers, whether or not they sold within any dealer's "zone of influence." Careful reading of the bill will indicate that the dealer obtains no such right of action.

Every action which reduces the dealer's equity does not give rise to a cause of action under this bill. The dealer is able to sue only where the manufacturer did not act in good faith in (1) terminating the franchise, (2) not renewing the franchise, and (3) performing or complying with the terms of the franchise. Therefore, the establishment of a new dealership by the factory, thus providing more competition for the dealer, would not give the dealer a right of action under this bill. It is probable that the Department's misconception of the bill stemmed from a reading of section 2 which affirmatively imposed the obligation upon the manufacturer to act in good faith, without reference to the situations in which the dealer can bring suit. Therefore, on the floor of the Senate, I proposed an amendment deleting the original section 2 in its entirety in the hope that certain confusion would thus be eliminated.

The Department suggests this bill erects for the dealers a sanctuary from the rigors of competition as they allege the concept of "dealer's equities" is intended to include safeguards for the dealer's margin of profit or investment. Any termination or failure to renew, this letter concludes, might drastically deplete the dealer's investment. This is a strained construction. The bill is not intended to guarantee dealer's profits or to insulate him from competition. As the report accompanying the bill stated, "this bill would not permanently bind a manufacturer to his dealer." The bill merely permits court review of the manufacturers' good faith when it elects to terminate or not renew. The court will consider all the evidence submitted by both sides bearing upon the good faith of either party.

Finally, the letter of the Department of Justice suggests that the language of the bill may raise constitutional problems. These constitutional problems are not spelled out. However, the suggestion that the bill subjects dealers to punitive damages for past acts not illegal when committed is erroneous. This bill has no retroactive effect. It creates rights of action only for failure of the factory in the future to act in good faith. As noted before, the provision for double damages has now been removed. While rights of parties created by existing franchises will be affected by this bill, it is difficult to foresee any lack of due process or other constitutional objections to a bill addressed at obvious inequities in existing franchises and which merely enables the dealer to have his day in court.

In the course of the debate on this bill on the floor of the Senate, questions were raised concerning the applicable statute of limitation. I indicated in substance that as the bill was then drawn the statute of limitations in the State of the forum would govern. I should point out, however, that experience in connection with private treble damage suits under the antitrust laws demonstrated the need for a uniform statute of limitations. Accordingly, Congress

enacted Public Law 137 providing for a 4-year statute of limitations. Since actions brought under the bill before this committee are in the nature of private antitrust actions, I respectfully suggest that this committee consider an amendment incorporating a comparable provision with reference to the limitation of actions.

The question was raised on the floor of the Senate whether the factory could refuse to furnish cars or decline to renew a franchise of a dealer who was bootlegging. I have since learned that the manufacturers are extremely fearful that this bill will prevent them from taking steps to curb the practice of bootlegging. It is passing strange that the factories should now raise this issue since they have never apparently concerned themselves in the past in withholding cars from bootlegging dealers or refusing to renew franchises of such dealers. However, the bill now requires both factory and dealer to act in such a way as to protect and preserve all the equities of the other which are inherent in the nature of the relationship between the parties. Each case will turn on its own facts. In a suit brought by the dealer for failure of the factory to furnish cars or in a suit for nonrenewal, the manufacturer could introduce evidence of the dealer's bootlegging activities. The jury will have to decide, under the circumstances of each case, whether there was a failure on the part of either party to act so as to preserve the equities of the other which are inherent in the nature of the relationship between them. As I have stressed earlier, this bill merely provides that the factory shall not have the sole authority to decide whether it may terminate or nonrenew. The courts can now review such action to determine whether the dealer received fair play.

The large corporations complain about Federal regulation. Yet the record of the hearings show that some of the automobile manufacturers assume the right to regulate the automobile dealer. This is a situation which the Government cannot tolerate. We are here face to face with the basic question of our time, namely, whether or not the individual citizen shall continue to be the source of the political and economic authority which may be exercised over him. That was the theory and principle of the United States Constitution, but because of technological advance and the change from individual enterprise to corporate enterprise, we have seen the regulation of our economic life pass from the hands of Congress, in which the Founding Fathers placed it, into the hands of the managing directors of giant corporations which in our time carry on practically all the trade, commerce, and industry of the entire Nation and good part of that of the whole world.

The time has come for the legislative body of the United States and for the executive branch to come to an understanding of what can be done to preserve small business from being absorbed by concentrated big business, which, under present conditions, operate according to its own will. I do not blame big business at all, because Congress is responsible for not having legislated effectively to meet the situation in which we find ourselves.

If we fail now to give the automobile dealer his day in court, we shall be sacrificing, in my opinion, the day in court of tens of thousands of small business people throughout the United States.

Congress must keep the door of opportunity open to all. We must not allow a situation to continue in which great accumulations of capital, counted in the billions of dollars, and operating not only on a nationwide basis, but also upon a worldwide basis, are able to overawe the small business people.

The CHAIRMAN. Now, the Chair is in a dilemma as to what shall be the next step here. We have two members of Congress here, Mr. Multer and Mr. Albert. There are several members of the committee here, but we have a consent—

Mr. McCULLOCH. One of our members is interested, too.

The CHAIRMAN. One of our distinguished members is also interested in this. He comes from an important area where cars are made.

We have a Consent Calendar, and we have on that calendar a great many bills.

Would it be convenient for the Members of the House who are presently here to come later in the afternoon, or would they prefer to go on now?

Mr. MULTER. I think so far as I am concerned, sir, I can make myself available to the committee this afternoon.

The CHAIRMAN. Fine.

Congressman Albert?

Mr. ALBERT. Any time is all right with me, Mr. Chairman, as far as I know.

The CHAIRMAN. Would 2:30 be all right?

Mr. ALBERT. 2:30, yes.

Mr. MULTER. Are you going to be here long?

Mr. ALBERT. About 5 minutes.

Mr. MULTER. Maybe they will take you now. Tell them that.

Well, 2:30.

The CHAIRMAN. Mr. Albert?

Mr. ALBERT. 2:30, Mr. Chairman.

The CHAIRMAN. I understand the House is under the 5-minute rule on the school bill. I am going to make a suggestion, I hope I do not get any brickbats thrown at me. How about a night session?

Mr. ALBERT. What time?

The CHAIRMAN. We have 12 witnesses, and 15 tomorrow. How are we going to finish?

Mr. MULTER. May I suggest that we set it for Congressman Albert and myself at 2:30, subject to our not being in the 5-minute rule?

From the list that I saw of conference reports, and suspensions and Private Calendar, I doubt that it will get to the 5-minute rule much before that.

Mr. KEATING. If we are under the understanding that we are under the 5-minute rule, then it will be automatically cut off.

The CHAIRMAN. What time shall we adjourn to? Will a night session be agreeable to the witnesses?

Admiral Bell, would your witnesses be willing to come back tonight?

Mr. BELL. Of course, sir.

The CHAIRMAN. Would that be agreeable to the members?

Mr. BELL. We have only two of them.

The CHAIRMAN. I do not know how we are going to finish with all these witnesses. There are about 30 witnesses.

Mr. BELL. My statement is short. Then we have a statement from a lawyer from the University of Indiana, and I would like him to follow me, and then we have the vice president of NADA, who can come on at any time.

The CHAIRMAN. That is very agreeable. But I have been importuned by Members of the House who are asking that we permit dealers in their particular areas to testify.

As I say, we have over 30 witnesses.

Mr. BELL. I do not believe they are ours, sir.

The CHAIRMAN. I do not know whose they are.

Mr. MULTER. Mr. Chairman, would it be agreeable to the committee to hear me at 1:30?

The CHAIRMAN. Suppose we leave it at 2:30, under the conditions that we have described.

We will adjourn until 2:30.

(Whereupon, at 11:50 a. m., the subcommittee recessed, to reconvene at 2:30 p. m., of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The meeting will come to order.

We have as the next witness our distinguished colleague from New York, Mr. Multer, whom I revere, and who has been associated with me as a Representative from New York for many years.

**STATEMENT OF HON. ABRAHAM J. MULTER, A REPRESENTATIVE
IN CONGRESS FROM THE 13TH DISTRICT OF THE STATE OF NEW
YORK**

Mr. MULTER. Thank you, Mr. Chairman.

Mr. Chairman, if it meets with your approval and that of the committee, I have a prepared statement which I suggest we make a part of the record rather than my reading it. And then I can make some comments about it, and more specifically about the bill that you are considering. I think in that way we can move along much faster.

The CHAIRMAN. You want to offer your statement for the record?

Mr. MULTER. Yes, sir; if you would, please, Mr. Chairman.

The CHAIRMAN. It will be accepted.

(The prepared statement of Representative Abraham J. Multer is as follows:)

STATEMENT OF REPRESENTATIVE ABRAHAM J. MULTER, 13TH DISTRICT, NEW YORK

Mr. Chairman and distinguished members of the committee, I appreciate the opportunity of appearing before your committee to present my views concerning proposed legislation to eliminate certain unfair practices in the automotive industry. I am aware of the long, untiring efforts of the committee to protect the public interest and to stave off the serious consequences threatening our economy because of certain unfair marketing practices in the industry.

I know that this hearing has been scheduled to consider S. 3879 which was passed by the Senate, and the chairman's bill, H. R. 11360. I trust you will not consider me presumptuous when I say to this committee that that bill hardly begins to touch the problem. It deals with only one of many unfair practices, and I believe it does not sufficiently attack even that one.

In this statement, with your permission, I will cover all of the problems, as I understand them, affecting the situation, and then give you my recommendations, for whatever they may be worth, for the guidance of the committee.

You will find that all of these matters have been fully documented and covered by supporting testimony in many congressional hearings, and in this Congress before the House and Senate Committees on Interstate and Foreign Commerce.

THE PUBLIC INTEREST

In commenting on some of the existing unfair practices in the automobile industry, I should like to specify one underlying fact, namely, that in the automobile market both the consumer and the dealer have little choice in the selection of the manufacturer. As you well know, the year 1955 saw the disappearance of one more private automobile manufacturer—Kaiser-Willys. Today only five sources remain—General Motors, Ford, Chrysler, American Motors, and Studebaker-Packard. It is an anomaly that as the market has grown the number of companies in the market has lessened. The public was only amused upon reading in the press that the General Motors Corp., the biggest manufacturer in this country, which is at the same time the country's largest automobile manufacturer, in testifying before the Senate Antitrust and Monopoly Subcommittee in December 1955, said that it "is the servant of the dealer." It is public knowledge that dealers have been forced into serflike submission to the manufacturer. The dealer's plight is manifest from the figures, such as those submitted by the General Motors Corp. last December showing that the 1953 return on net worth for dealers averaged 14.40 percent, and was reduced in 1954 to 9.4 percent.

Comparable figures show that the corporation earned 20 percent in 1953 after taxes and bonuses, and almost 24 percent in 1954. In 1955 it was over 28 percent.

MANUFACTURER-DEALER RELATIONS

Committees in this Congress have directed their attention to the subjects of territorial security for automobile dealers, bootlegging and so-called phantom freight. There are also other unfair marketing practices in the industry that must be appraised in evaluating the position of the industry in our economy. With the committee's permission, I will comment on all of these practices.

A substantial part of the problems which beset the industry stem from the dealer agreement which is so drawn that manufacturers may grant or withdraw the franchise at will.

I am in favor of the principle which would validate manufacturer-dealer contracts establishing exclusive representation by dealers for fixed periods of time. Heretofore, such contracts have been at the will of the manufacturer. In my opinion, manufacturers have wielded their whip of economic power too long, and if we are to avoid repetition of the picture of the thirties, and if we are to meet our obligation to the public legislation must be enacted now to protect our economic structure.

As long as manufacturers want to have dealers under contract to handle only particular makes of cars, the manufacturers should be required to sell only to such dealers and to prohibit bootlegging. Manufacturers should be required to cancel the franchises of bootleggers. I have incorporated many of my views in H. R. 10310, which I introduced on March 29, 1956.

As a result of the recent congressional investigations, we have observed newspaper reports that the manufacturer's cancellation privilege will be superseded by a provision requiring the cancellation to be for cause. But will the manufacturer be compelled to define the term "cause"? There is no uniformity among the court decisions construing automobile franchise agreements.

Incidentally, some State legislatures are making strides in revoking the manufacturer's arbitrary cancellation privilege. In my own State of New York, Governor Harriman, on April 20, 1956, signed a bill amending the New York general business law, for the purpose of prohibiting automobile manufacturers from arbitrarily revoking the franchises of dealers in New York State. Under the law effective October 1, 1956, auto manufacturers are required to register with the Secretary of State and are prohibited from terminating a dealer contract except for cause.

A maximum penalty of \$1,000 fine is imposed for each violation. We should not be surprised to learn that automobile manufacturers opposed the legislation, claiming that "the public interest is not sufficiently affected."

In his statement upon signing the bill, Governor Harriman announced it was his firm conviction that "it is very much in the interest of the people that small and medium-sized business should be protected against unfair exercise of economic power."

In view of the peculiar nature of the automotive industry, coupled with the clear proof that previous congressional admonishments have been flouted, it is the duty of the Congress to enunciate a public policy that will protect the consumer interests in their relations with the economic giants who not only produce this article of necessity, but also control its distribution, as well as the price thereof.

ADVERTISING ABUSES

The dealers must pay for advertising literature they do not want and would not order. It is sent in to the dealer in such quantities as the manufacturer thinks he should distribute, and the dealer is billed and must pay for that literature even though he throws most of it into the wastebasket. The dealers must pay a fixed sum per car to the manufacturers toward the cost of advertising. The dealer's name and address is never part of that advertising, only the product is mentioned. This policy would cease if the responsibility for exaggerated and fraudulent advertising were laid at the door of the manufacturer and if the manufacturer were prohibited from requiring dealer contributions toward the cost of such advertising.

Only recently, as a result of testimony adduced at congressional hearings, the Federal Trade Commission filed charges against the General Motors Corp. for false and deceptive advertising. Independent manufacturers have reported that General Motors' use of the words "genuine Chevrolet" to describe parts used in

making repairs is diverting business from the independent manufacturers and small repair shops.

The parts manufacturers contend that the items, distributed and warranted by General Motors, actually are bought by General Motors from the independent manufacturers. The implication is that the "genuine Chevrolet" parts are superior to the same parts sold by competitors without such label.

DELIVERIES WITHOUT ORDERS

Manufacturers require dealers to file each month several reports showing sales and inventory volumes. The manufacturer bases his deliveries to the dealer upon these figures. Whether or not the dealer considers this quota salable is immaterial.

Moreover, the dealer has no control over the various built-in accessories that are billed as extras. For instance, the automobile is listed as equipped with vacuum windshield wipers, but is later shipped in with an electric wiper billed as an "extra." Every car comes with a hole in the dashboard for a cigarette lighter, but the lighter is an extra.

It is the manufacturer, also, who determines the stock of parts and accessories that the dealer must purchase from the automobile manufacturer. The dealer could purchase these same parts and accessories directly from the parts manufacturer and much cheaper, too.

The only way to abolish this practice is to prohibit lump-sum bills and to require of the manufacturer and of the dealer a complete itemization of all charges. No amount should be collectible by either for extras unless ordered in writing by the buyer.

OLD CARS SOLD AS NEW

The need to eliminate the unfair practice on the part of some dealers in selling as new automobiles those which have been towed or driven from the factory or used as demonstrators has long been recognized but completely ignored. Under legislation I have introduced, it would be a violation for any manufacturer or dealer to replace or disconnect the speedometer on an automobile or to change its reading in a manner to mislead the public as to the mileage, condition, or usage of the automobile.

The foregoing, as well as the other unfair automobile marketing practices commented upon throughout this statement, are dealt with in the omnibus bill, H. R. 10310, which I introduced on March 29, 1956, to provide for the enactment of a general motor vehicles law.

AUTOMOBILE FINANCING

Not to be overlooked in any compilation of unfair automobile marketing practices are the reports of substantial overcharges under the "package" finance deals. Dealers complain, too, they are forced to grant "wild credit" to consumers in order to satisfy quotas in the manufacturer's race for sales.

Insofar as General Motors' installment sales are concerned it should be noted that if the purchaser defaults, the manufacturer has recourse against the dealer. Contemplate, if you will, the situation of the small-business man—the average dealer with an investment of his life's savings in showroom, service station, autos, and parts. Should the market fall, upon whom would the loss rest?

Upon the dealers themselves, because the manufacturers have so directed.

If my memory serves me, the total amount of installment paper on all consumer items last year was \$26 billion—of which \$14 billion represented the automobile business.

Thus far in 1956 auto installment loans extended in January and February totaled \$2.5 billion—an increase of 14 percent over last year. Yet, on the other hand, production and sales are running about 26 percent below a year ago.

In April of this year three large finance companies announced increases in auto-loan costs which will be passed on to the dealers. Dealers, in turn, must either absorb the costs or pass the increase on to their consumers.

The consequence is that the squeeze is continually put on the dealers. General Motors defies the country to compel it to accept any shrinkage in its pre-determined profits.

Incidentally, GMAC has not yet made any statement on its installment costs. It, of course, is the largest auto finance company.

As a group, the finance companies account for 55 percent of the auto installment credit volume. The other 36 percent is handled by the banks which have

also recently raised rates. Is it not fair to assume that General Motors will also make such an additional charge?

CHEATING OUR SOLDIERS

At this point I should like to touch on a matter that involves the now well-known adage: "What is good for General Motors is good for the country." You will see in a moment that we can now change that to "What is wrong for the insurance companies is not wrong for the automobile companies."

On September 8, 1955, I wrote to Secretary of Defense Wilson, calling his attention to a scheme by which armed service personnel returning to this country are being duped and mulcted of thousands of dollars in connection with the sale to them of new automobiles.

I indicated that the matter had been called to the attention of the automobile manufacturers who have failed to do anything to prevent these practices. I further stated that the Secretary of Defense need not make any determination of whether these practices are fraudulent or merely unethical, but urged him to direct all commanding officers to alert his men to these practices to afford them an opportunity to protect themselves accordingly.

My letter of September 8, 1955, is exhibit A, which I submit herewith. I received an answer, dated September 23, 1955, a copy of which is submitted as exhibit B, in which the Department of Defense refused to take any action.

I replied by letter of September 28, 1955, a copy of which I also submit and mark exhibit C, again indicating the need for departmental action. No answer has been received to my last letter.

Now let us see what happened when the Department's attention was called to similar fraudulent practices by insurance salesmen.

No General Motors was involved.

An investigation was instituted which confirmed the charges. A complete set of regulations was promulgated by the Department of Defense, including a directive to commanders of all bases, making them responsible for protection of the men against such frauds.

Another reason for different treatment of the phony automobile salesmen is that the fraudulent business is so profitable that the automobile manufacturers have sent their own "direct" representatives overseas to grab this business.

MANUFACTURING WARRANTIES

What is the situation today?

The consumer may need a new automobile, but he dreads the purchase. Breaking in the car means running back and forth to the dealer to correct inherent mechanical failures that are uncovered long after the guaranty period has expired.

The attitude of the consumer is aptly defined in unsolicited letters I received, which were printed in the Congressional Record—one appearing in the January 31, 1956, issue (pp. A993-A995); another in the February 9, 1956, issue (p. A1331); and a third and fourth in the March 21, 1956, issue (pp. A2543 and A2548 respectively).

The dealer, on the other hand, is called upon as a regular procedure to comply with, not his warranty, but a warranty the company requires him to make.

What has been the dealer's redress? The answer the dealer receives from the manufacturer is to step up or maintain his sales volume—even if that means come-on advertising, bootlegging, price packing, and any other unfair trade practice. Even outright fraud is countenanced by the manufacturer.

Many an inexplicable accident is caused by defective vehicles. The manufacturer upon whom the blame should rest passes the responsibility onto the dealers who cannot assume nor begin to fulfill the obligation. The automobile manufacturer today makes only a spot check of 1 out of every 10 or 20 automobiles that leave the assembly line. The company's warranties are plainly worthless, and the dealer upon whom the responsibility falls gives a minimum of service until the guaranty period expires; after which, he charges the consumer for "repairs."

In testifying last December before a Senate committee a spokesman on behalf of 1 out of the 6 manufacturers in the country stated:

The manufacturer assumes the greater risks and bears the ultimate responsibility to the customer.

Should we not make certain, then, that this responsibility is firmly fixed?

My bill, H. R. 10309, prohibits the interstate sale, transportation, or use of a new automobile unless accompanied by a certificate of fitness from the manufacturer or assembler, showing that the automobile has been inspected and found in good working order and, further, that it has been road-tested and found in good operating condition.

BOOTLEGGING

This topic needs very little amplification. Every Member of Congress is fully familiar with the practice which has grown up in this industry at the active instigation and with behind-the-scenes connivance of the automotive manufacturers.

On the one hand, they require a dealer to handle only their new cars. Then they load him up with more cars than he can sell to the consuming public. Then they help him dispose of those cars to nonfranchised dealers.

When a complaint is made to the manufacturer about this unfair practice, the manufacturer responds that he can do nothing about it because of the antitrust laws.

When we seek to amend the antitrust laws to prohibit such practice, the manufacturers come in and complain that it would be an unfair restriction upon their right of free enterprise.

MANUFACTURER REACTION TO CONGRESSIONAL HEARINGS

On the heels of the disclosure of so many unfair practices in the industry, we now see by the papers that the manufacturer pretends he is reforming. General Motors Corp. has predicted "the beginning of a new era—an era of good will" in relations with its dealers.

The Ford Motor Co. announced dealer-management talks to show dealers how they will gain by joining the fight against bootlegging.

In so doing, Ford said this was the first time dealers have been called to discuss the bootlegging problem with top management.

I say to you, gentlemen of the committee, that such overtures are too late.

The public confidence can only be restored by the affirmative action of this Congress. Let us recall that a similar false contrition permeated the atmosphere in 1938 after the Congress enacted House Joint Resolution 594, which directed the Federal Trade Commission to investigate the policies of motor vehicle manufacturers and dealers in their relation to the public interest.

The Commission, 1 year later, made public its findings, which were not at all unlike the unfair practices that are now paraded before congressional committees.

Unfortunately, the Congress took no action at that time, for the reason, among others, that the industry itself rejected any type of Federal legislation.

THE MANUFACTURERS' WAY OF ELIMINATING AN UNFAIR TRADE PRACTICE

The elimination of acknowledged unfair practices in the automobile industry cannot be left to the discretion of the industry itself.

Let me illustrate: The phantom freight charge has long been prevalent in the automobile industry. A similar practice among steel producers, Pittsburgh-plus, was eliminated in the thirties. Under this practice the manufacturer ships the automobiles to dealers from nearby assembly plants and requires the dealer to pay for the transportation in an amount equivalent to, or even greater than, the rail freight rates from the factory to the dealer's delivery points.

Let us examine the 1954 shipment record for motor vehicles as reported in the 35th edition of Automobile Facts and Figures, 1955. Of the 6,601,071 motor vehicles shipped, 80.5 percent or 5,314,842, left the factory by highway—on a big truck that hauls several other cars, or towed behind another new car.

Shipment by boat accounted for 5.6 percent, or 370,044; while rail shipments accounted for only 13.9 percent.

In other words, only 916,185 out of a total of 6,601,071 motor vehicles shipped went by rail.

You have seen reports stating that the "phantom" freight charges have annually amounted to over \$250 million. And what has the manufacturer to say?

Ford has admitted that in 1954 it gained \$50 to \$60 million on its total distribution charges.

General Motors testified before a Senate committee that its excess of collections over actual freight paid for last year would be about \$152 million.

We may rest assured those were conservative estimates. Do not forget that the excess profit per unit in previous years was much greater, because it was not based on the lower freight rates announced at various times by the industry.

I urge that the public announcements now being flaunted in our faces by the manufacturers as to their "mended ways" is merely an attempt to becloud the issue.

As of February 29, 1956, Chrysler Corp., General Motors Corp., and the Ford Motor Co. eliminated phantom freight charges.

These three manufacturers at the same time increased the wholesale price of their cars to their dealers.

This, in the face of the Chrysler testimony that they paid out more for freight charges than they collected.

The manufacturers contend they should be permitted to deal with the so-called phantom freight on an industrywide basis.

Their testimony and their actions, in my opinion, indicate they cannot be trusted to solve these problems.

As long as the industry practice is to collect a separate charge from the public, which is represented as the cost in making delivery of the automobile from the factory to the consumer, then the industry should not be permitted to collect any more than such actual cost.

For this purpose, I have introduced H. R. 7935, which would amend the Internal Revenue Code of 1954 to require every seller of property, who collects from the purchaser any amount as a charge for the transportation of such property, to furnish such purchaser a statement showing the amount of transportation charges, if any, taxable under section 4271 (a) of such code, and the amount of tax imposed.

I have heretofore referred to the report filed by the Federal Trade Commission in 1939 pursuant to its study of the automotive industry. It should be noted that, irrespective of whether or not legislative action was necessary, the Government controls of World War II limiting production obviated the need for positive action by the Congress at that time.

Nevertheless, we find the same unfair practices prevalent in the industry today and, what is worse, on a larger scale. In these circumstances, our duty to the public is not discharged by a formal disclosure of their nature.

In conclusion, I should like to make this observation. The manufacturers representing the automotive industry can best be described as giant octopuses whose tentacles of economic power extend over every phase of the industry, as well as over many unrelated products.

On the other side of the picture are the 42,340 dealers, 90 percent of whom are small-business men, the very backbone of our free-enterprise system. In most cases they are the civic and philanthropic leaders in their communities. In the past their position has been one of dignity among their fellow citizens. They are fast becoming the most despised members of their communities.

There were 219 dealer bankruptcies in 1953, the highest number since 1938. Two hundred and forty-one dealer mortalities occurred in 1954. The April 30, 1956, issue of Automotive News gives some interesting figures on General Motors' dealer terminations. The figures are based on the first 10 months of 1955 as against 1954. In 1955 there were 176 nonrenewals against 150 for 1954; 214 involuntary terminations in 1955 against 192 for 1954; 1,908 voluntary terminations in 1955 as against 1,585 for 1954.

It is high time to put this house in order.

RECOMMENDATIONS

There are several legislative ways of remedying all of these very bad conditions in this industry. It can be done by enactment of a combination of the various bills which have been referred to the Interstate and Foreign Commerce Committee. It can also be done by this committee's reporting a bill which would write into the antitrust laws a fair code of practices which would cover all of these matters. There is little point in attempting to take them one at a time and treat each of them by a separate bill. The only way to clean up this industry is by doing the full job.

With all due respect to the Senate, its bill, S. 3879, will accomplish very little, if anything. I doubt whether any law can be enacted which will require anyone to renew a contract which has expired or is about to expire. To provide merely for compensatory damages in the event of cancellation or termination of a contract will accomplish nothing except to clog the court calendars with litigation.

What compensation can the court fix in the event of an unlawful or improper cancellation of a contract? The loss of future earnings is not compensation. If the dealer has a large investment in a service station which is connected to his showroom, what compensation is he to get when his contract is canceled? He still owns the service station. The same applies to his showroom. Is the court to say that a showroom for a Buick car is worth less than for some other car? Or that the automobile showroom cannot be used for an equally valuable purpose other than an automobile showroom?

Any law like this, to be effective, will have to carry with it a provision for double or triple damages and punitive damages, plus some arbitrarily fixed sum large enough to serve as a penalty which will deter the improper practice.

Surely this committee will agree that, as important as it is to prevent cancellations of franchises, it is even more important to prevent fraudulent advertising and bootlegging and phantom freight charges, and to require certificates of fitness and safety. These latter items are for the protection of the general public.

Certainly it is just as important in trying to protect the dealer to also prohibit the manufacturers from requiring the dealers to buy and pay for automobiles and parts which they do not order, and to prohibit the requirement of the dealer to buy only the accessories carrying the name of the automobile manufacturer when in fact those accessories are manufactured by others than the automobile manufacturer.

Again, Mr. Chairman and members of the committee, permit me to thank you for the opportunity to attend here and express my views on these very important matters.

EXHIBIT A

HOUSE OF REPRESENTATIVES,
Washington, D. C., September 8, 1955.

HON. CHARLES E. WILSON,
Secretary, Department of Defense,
Washington, D. C.

MY DEAR MR. SECRETARY: For sometime Members of Congress have been receiving complaints about the tactics being used by various dealers in selling new automobiles to members of the Armed Forces returning from posts outside of the country.

It seems that some of these retailers have sent representatives abroad who through fraud and deceit induce these men who are about to return to the United States to sign contracts, and to pay deposits for the delivery of new automobiles to them at the port of their arrival in this country. As part of this scheme these retailers have made exclusive rental agreements for offices in the hotels in this country at which these men and their families are temporarily lodged upon their arrival here. The deceptive practices are continued at those places until the delivery of a new automobile is made and payment obtained.

No purpose can be served by setting forth in this letter the nature of the fraudulent representations that are made, nor is it necessary for the purpose of this letter to determine whether or not these practices are actually fraudulent or merely unethical business practices. The result of all of these practices is that these men are being duped and taken advantage of. They are paying more for these automobiles than if they bought them in their hometowns or, for that matter, if they bought them at the port of arrival. They are paying higher finance charges than they would pay if they took the opportunity of financing their automobiles in their hometowns or in the city in which they are discharged from the service, and they are being deprived of the inspection and service that ordinarily goes with a new-car purchase when made in their hometowns.

The automobile manufacturers, when apprised of these practices, have taken the position that these retailing practices are no concern of theirs.

I believe you will agree with me that in the absence of the manufacturers' undertaking to prevent these practices, something must be done to help these men.

My suggestion is that you immediately issue a directive requiring commanding officers in all stations outside of this country to alert the men under their command to this situation, and to advise those men that it is inadvisable for them to make such purchases while abroad, or, for that matter, even at the place of arrival in this country, or the place of discharge from the service in this country, and that their best interests will be served by their making such purchases from dealers in their home communities. The hometown dealers, in almost every instance, can arrange for the delivery of a new automobile to them at their point

of arrival or discharge in this country, which would then be available for them for transportation to their hometowns.

I hope you will agree with me that such a directive will serve a very useful purpose. As a matter of fact, the directive and the notice from the local commanding officer can be appropriately worded so that neither manufacturers nor retailers need be accused of any wrongdoing or impropriety, and yet provide some measure of protection to the members of our Armed Forces.

With kindest personal regard, I am,

Sincerely yours,

ABRAHAM J. MULTER.

EXHIBIT B

ASSISTANT SECRETARY OF DEFENSE,
Washington, D. C., September 23, 1955.

HON. ABRAHAM J. MULTER,
House of Representatives.

DEAR MR. MULTER: This is in reply to your letter of September 8 concerning certain practices of automobile dealers in selling to members of the Armed Forces returning from overseas posts.

You appreciate, I am sure, that no agency of the Department of Defense sponsors any plan of automobile sales such as you describe and the Department is therefore without jurisdiction to discontinue it. The selection of an automobile salesman or sales contract is a matter of individual choice.

Overseas representatives of United States automobile dealers are not amenable to military control. So long as they comply with the laws of the locality in which they do business they can offer their merchandise for sale to both civilian and military. Control of this group like their contemporaries at the port would appear to rest with the automobile dealers, their trade associations and perhaps the manufacturers.

I believe that the directive you suggest would be more restrictive than is appropriate for issuance by this Department and that it might affect the legitimate activities of firms and dealers who render real service to our personnel. I believe that the objective we seek, the use of caution and judgment by servicemen in their purchases from unknown vendors, can best be accomplished by a continuation of the present normal counseling given by commanders to their troops. I am taking the liberty of sending a copy of your letter to the military departments.

Your interest in the welfare of our Armed Forces personnel is appreciated.

Sincerely yours,

CARTER L. BURGESS.

EXHIBIT C

HOUSE OF REPRESENTATIVES,
Washington, D. C., September 28, 1955.

CARTER L. BURGESS,
*Assistant Secretary of Defense,
Department of Defense, Washington, D. C.*

DEAR MR. BURGESS: Receipt is acknowledged with thanks of yours of September 23.

I fail to understand how the directive as suggested by me is in any manner restrictive. It does not require the Department or any commanding officer to take a position on the matter, nor in any manner to interfere with automobile dealers in this country or abroad. It has always been proper for the Defense Department to alert the members of the Armed Forces against dangers that they may encounter, whether physical, moral, or financial.

Alerting these men to these practices is in direct line with such procedure.

Sincerely yours,

ABRAHAM J. MULTER.

The CHAIRMAN. We have many questions which I know you, as an exceptionally able lawyer, can be of help to us in answering.

Mr. MULTER. I made notes on much of the Senator's testimony, and notes on some of the questions addressed to him, and I will comment upon them during the course of my remarks.

The question which your committee is considering now, Mr. Chairman, is not new to this Congress or any of its predecessors. It has been the subject of testimony on many occasions. Two committees of this Congress have taken considerable testimony on the overall subject. You will find in my prepared statement that I have subdivided the overall problem and given it various titles. And the strange thing about it all is that the titles are very much like the titles you will find in the report that I hold in my hand.

This entire volume is a report of 1,077 pages. This report was prepared by the Federal Trade Commission and submitted to the Congress on June 5, 1939, after the Congress, in 1938, had adopted House Joint Resolution 594 directing it to conduct a complete investigation of the problems involved in the automotive industry.

The Congress at that time had conducted quite lengthy hearings on this subject before it adopted this resolution calling for this investigation.

Mr. Chairman, I understand that Congressman Albert's statement is very much briefer than mine; and if it meets with your permission, I have no objection to stepping aside.

Mr. ALBERT. I do not want to do this, if it will interfere with your testimony; but my statement is brief, and I would appreciate it if I could go on, Mr. Chairman, at this time.

The CHAIRMAN. Certainly.

Mr. ALBERT. Thank you, Abe. I appreciate that.

STATEMENT OF HON. CARL ALBERT, A REPRESENTATIVE IN CONGRESS FROM THE THIRD CONGRESSIONAL DISTRICT OF THE STATE OF OKLAHOMA

Mr. Chairman, I very much appreciate this opportunity to appear before your committee on this problem which is of interest to me and all my constituents.

As far as I know, all the franchised dealers in my district favor this legislation. They regard this as the No. 1 problem in the retail field, because the manufacture and distribution of automobiles is the leading industry in the United States.

According to the Bureau of the Census, the motor vehicle and parts industry has ranked No. 1 in manufacturing in every year since 1939 in the number of production workers, production-worker wages, and value added by manufacture.

Just the other day, the Secretary of Commerce released figures showing that in the latest census of business for retail trade, Americans spent more than \$25 billion for automobiles in 1954.

This is nearly 15 percent of the total retail sales of that year.

Furthermore, the investment of the automobile manufacturers in the United States, according to the Monroney subcommittee, amounts to about \$7½ billion.

The automobile manufacturers employ 761,200 persons annually. Their dealers have invested almost \$5 billion, and they employ about 667,800 persons, approximately 9.7 percent of the total retail employment in the United States. The average dealer's investment is about \$118,000.

I point to these figures, Mr. Chairman, to indicate the manufacture and sale of automobiles is really a cornerstone of the American

economy, but the members of this committee and other committees that have studied in this field know that there has been serious economic stress in the small-business segment of the automobile business for the last 3 years.

I need not elaborate on that point, other than to note that the president of the Ford Motor Co. testified recently before the Monroney subcommittee, that the company was realizing a profit of 17.3 percent on each car sold while dealers were realizing a profit of only 1.73 percent; and, also, replied to the Monroney subcommittee's questionnaire, replies which came from about 20,000 out of the approximately 42,000 automobile dealers, were more than 7 to 1 in favor of congressional study, or Federal legislation with regard to automobile dealers' problems.

This, of course, is not a new problem to the Congress. As early as 1938, the House Interstate and Foreign Commerce Committee directed the Federal Trade Commission to make a thorough study of the automobile industry.

In a report after more than a year of study the Federal Trade Commission stated:

The Commission finds that motor-vehicle manufacturers, and, by reason of their great power, especially General Motors Corp., Chrysler Corp., and Ford Motor Co., have been, and still are, imposing on their respective dealers unfair and inequitable conditions of trade—

and this contains numerous instances of this and I shall, with the permission of the Chair, include the full statement in the record.

Mr. Chairman, when you have 42,000 dealers who are small, independent businessmen dealing with 5 motor-vehicle manufacturers, or really with just the 3 who control 95 percent of the production, the situation naturally lends itself to a discrepancy of bargaining power.

This discrepancy can be compared with the situation in which labor found itself 40 years ago, where the individual worker found it impossible to bargain effectively with the employer of thousands of other workers.

You will remember that Congress found it necessary to outlaw the "yellow dog" contract. In addition to the fact that the automobile business is the No. 1 industry in the United States, and that a tremendous disparity of bargaining power exists between the manufacturers and the retail outlets, there is a third factor that Congress must take into account, and that is the peculiar distributive system.

Several factors are combined in this system. In the first place, an automobile dealer, unlike most retailers, has only one supplier, and cancellation by that supplier is an economic death.

The second, the automobile dealer has a one-purpose business which cannot be readily converted on the open market into another type of establishment.

Third, by the very nature of the business, its technical aspects and its traditional marketing pattern, a closer relationship must exist, and a greater amount of supervision must be exercised by the factories over their retail outlets.

Fourth, the automobile dealer is not free to sell his assets on the open market to whoever will bid the highest. The manufacturer has an economic veto, both over the person to whom the dealer may sell and the price he may receive.

Fifth, very few businesses require the relatively large outlay of capital investment that automobile dealers require.

Sixth, the automobile dealer takes a major part of the risk in the business because the automobile dealer pays for the car as soon as it leaves the assembly line.

Seventh, the 90-day cancellation clause contained in a factory-dealer contract taken in connection with the above-distinguishing features of the automobile business, represents a gun at the head of the dealer, and even prevents his borrowing money from banks to finance his investment.

I understand, incidentally, that under the glare of the congressional spotlight, General Motors Corp. has recently revised its cancellation clause.

I understand also that many concessions were made in 1938 after those investigations.

The fact that we are here today shows that the concessions made by the automobile manufacturers do not last.

Mr. Chairman, the chief issue involved in this legislation, as I understand it, is the present discrepancy in bargaining power. The 42,000 automobile dealers are at a distinct disadvantage in dealing with the 5 automobile manufacturers.

In my opinion, H. R. 11360 presents the most effective means yet suggested of dealing with this problem without undue interference of Government in private business.

I believe the psychological effect of this legislation on the industry may well be that the dealers will be freed of the captive situation that they have been long subjected to.

I hope it will not be necessary to file a single suit. The bill merely recognizes the duty of the manufacturer to use good faith in his dealings with dealers.

It merely writes into existing and future agreements the requirement of good faith.

As I understand this term, it has a definite meaning under the law. It applies to relationships between parties whose business relationships are peculiarly close. It recognizes that closeness. It recognizes the fiduciary relationship between the manufacturer and the dealer. This fiduciary relationship has been present always in the manufacturer-dealer relationship. But the manufacturers have been able to reap the benefits and take none of the burdens. They have been able to control the business, but not be responsible for it, either from the standpoint of investment or from the standpoint of inventory.

H. R. 11360 would put no burden on the manufacturer except to recognize that the manufacturer cannot run rough-shod over the dealer.

Now, Mr. Chairman, I want to thank the committee for its indulgence in hearing me at this time, and my friend, Abe Multer, for letting me come in as an interloper.

I know that Mr. Multer will discuss the constitutional and legal ramifications of this legislation. He always prepares his material well, and is really a fine lawyer.

I would thank him again and thank your committee, and ask and request that my full statement may be inserted in the record.

The CHAIRMAN. You have that permission, and I can assure you that you are never an interloper.

Mr. ALBERT. Thank you very much, Mr. Chairman.

The CHAIRMAN. You are always welcome before this committee.
(The prepared statement of Mr. Albert is as follows:)

STATEMENT BY REPRESENTATIVE CARL ALBERT, THIRD DISTRICT, OKLAHOMA, BEFORE
THE HOUSE JUDICIARY COMMITTEE ON H. R. 11360

Mr. Chairman, I appreciate very much the opportunity to appear here today and express my views on the biggest problem in the American retail marketing field. I consider this the No. 1 problem in the retail field because the manufacture and distribution of automobiles is the leading industry in the United States.

According to the Bureau of Census, the motor vehicle and parts industry has ranked No. 1 in manufacturing every year since 1939 in number of production workers, production worker wages and value added by manufacturer. Just the other day, the Secretary of Commerce released figures showing that in the latest census of business for retail trade, Americans spent \$25,107,984,000 for automobiles in 1954. This is nearly 15 percent of the \$169,967,469,000 total retail sales of that year. Furthermore, the investment of automobile manufacturers in the United States, according to the Monroney subcommittee of the Senate, amounts to about \$7½ billion. The automobile manufacturers employ 761,200 persons annually. Their dealers have invested almost \$5 billion and they employ about 667,800 persons—approximately 9.7 percent of the total retail employment in the United States. The average dealer's investment is about \$118,000.

I point to these figures, Mr. Chairman, to indicate that the manufacture and sale of automobiles is truly a cornerstone of the American economy and should be the healthiest element in our economy.

But the members of this committee and of the other committees that have been studying this field know there has been serious economic stress in the small business segment of the automobile industry for the last 3 years. I need not elaborate on that point other than to note that the president of Ford Motor Co., Henry Ford II, testified recently before the Monroney subcommittee that the company was realizing a profit of 17.3 percent on each car sold, while dealers were realizing a profit of 1.73 percent. Also, replies to the Monroney subcommittee questionnaire, replies which came from about 20,000 out of the approximately 42,000 automobile dealers, were more than 7 to 1 in favor of congressional study or Federal legislation with regard to automobile dealer's problems.

Now this is not a new problem to Congress. As early as 1938, the House Interstate and Foreign Commerce Committee directed the Federal Trade Commission to make a thorough study of the automobile industry. In a 1,077 page report, after more than a year of study, the Federal Trade Commission stated:

"The Commission finds that motor-vehicle manufacturers, and, by reason of their great power, especially General Motors Corp., Chrysler Corp., and Ford Motor Co., have been, and still are, imposing on their respective dealers unfair and inequitable conditions of trade, by requiring such dealers to accept, and operate under agreements that inadequately define the rights and obligations of the parties and are, moreover, objectionable in respect to defect of mutuality; that some dealers, in fact, report that they have been subjected to rigid inspections of premises and accounts, and to arbitrary requirements by their respective motor-vehicle manufacturers to accept for resale quantities of motor vehicles or other goods, deemed excessive by the dealer, or to make investments in operating plants or equipment without adequate guaranty as to term of agreement or even supply of merchandise; and that adequate provisions are not included for an equitable method of liquidation of such investments, sometimes made at the insistence of the respective motor-vehicle manufacturer" (H. Doc. 468, 76th Cong., 1st sess., Report on Motor Vehicle Industry).

Mr. Chairman, when you have 42,000 dealers who are small independent businessmen dealing with 5 motor vehicle manufacturers—or really with just the 3 who control 95 percent of the production—the situation naturally lends itself to a discrepancy of bargaining power. This discrepancy of bargaining power can be compared with the situation in which labor found itself 40 years ago where the individual worker found it impossible to bargain effectively with the employer of thousands of other workers. You will remember that Congress found it necessary to outlaw the "yellow dog" contract.

In addition to the fact that the automobile business is the number one industry in the United States, and that a tremendous disparity of bargaining power exists between the manufacturers and the retail outlets, there is a third factor that Congress must take into account, and that is the peculiar distributive system. Several factors are combined in this system.

In the first place, an automobile dealer, unlike most retailers, has only one supplier and cancellation by that supplier is an economic death sentence.

Second, the automobile dealer has a one-purpose business which cannot be readily converted on the open market into another type of establishment.

Third, by the very nature of the business—its technical aspects and its traditional marketing pattern—a closer relationship must exist and a greater amount of supervision must be exercised by the factories over their retail outlets.

Fourth, the automobile dealer is not free to sell his assets on the open market to whoever will bid the highest. The manufacturer has an economic veto, both over the person to whom the dealer may sell and the price he may receive.

Fifth, very few businesses require the relatively large outlet of capital investment that automobile dealerships require.

Sixth, the automobile dealer takes a major part of the risk in the business because the automobile dealer pays for the car as soon as it leaves the assembly line.

Seventh, the 90-day cancellation clause contained in factory-dealer contracts, taken in connection with the above distinguishing features of the automobile business, represents a gun at the head of the dealer and even prevents his borrowing money from banks to finance his investment. I understand, incidentally, that under the glare of the congressional spotlight, General Motors Corp. has recently revised its cancellation clause. I understand also that many concessions were made in 1938 after those investigations. The fact that we are here today shows that the concessions made by the automobile manufacturers do not last.

Mr. Chairman, the chief issue involved in this legislation is the present discrepancy in bargaining power. The 42,000 automobile dealers are at a distinct disadvantage in dealing with the 5 automobile manufacturers. In my opinion, H. R. 11360 presents the most effective means yet suggested of dealing with this problem without undue interference of Government in private business.

I believe the psychological effect of this legislation on the industry may well be that the dealers will be freed of the captive situation they have been subjected to for so long. I hope it will not be necessary to file a single suit. The bill merely recognizes the duty of the manufacturer to use good faith in his dealings with dealers.

It merely writes into existing and future agreements the requirement of "good faith." As I understand this term, it has a definite meaning under the law. It applies to relationships between parties whose business relationships are peculiarly close. It recognizes that closeness. It recognizes the fiduciary relationship between the manufacturer and the dealer. This fiduciary relationship has been present always in the manufacturer-dealer relationship, but the manufacturers have been able to reap the benefits and take none of the burdens. They have been able to control the business, but not be responsible for it, either from the standpoint of investment or from the standpoint of inventory. H. R. 11360 would put no burden on the manufacturer except to recognize that the manufacturer cannot ride roughshod over the dealer.

I want to thank the subcommittee again for hearing me, and I wish to compliment you for your consideration of this problem.

Mr. McCULLOCH. I would like to ask Mr. Albert this question.

Do you think that the Congress should enter the field of the farm equipment manufacturer and the farm equipment dealer as it has proposed to go into the automotive field here?

Mr. ALBERT. It might well be. Certainly I think that should be preceded by a study to find out whether the situation is parallel or not. I am not sure that it is. It may be.

Mr. McCULLOCH. And in the home-equipment field, are some of the same questions involved there, as in this field?

Mr. ALBERT. I believe that in the home-equipment field there does not exist the monopoly that exists in the automobile field, although I

may be wrong. I think wherever the principle is parallel, the action of the Congress should be parallel.

Mr. McCULLOCH. Then it is your studied judgment, as a matter of economic and political policy, that it is proper for the Congress to go into this field in the general way as proposed by the bills under consideration today?

Mr. ALBERT. I do not want to make a general statement as to how far Congress should go in this field. I think that Congress answered the question of whether it should get into the field of monopoly when it first started legislating in the antitrust field.

I think the policy is established, and where you have a monopoly such as exists in the automobile business, and where the evidence is so plain from what I have read of the various hearings that have been conducted in this field, that there is a tendency to run roughshod over individual businessmen who have no alternative but to accept the dictates of the manufacturer, I think it is time, then, for the Congress to intervene.

And I think that is what this legislation proposes to do.

Mr. McCULLOCH. One further question.

Then I take it from what you have said, you do not think there are enough serious overtones to adversely affect our capitalistic economy and cause us to go very slow, or refuse to enact this legislation?

Mr. ALBERT. Well, as I stated, I don't want to make any statement with respect to all industry, without knowing in advance that the situation is parallel. I would prefer to limit my testimony to the situation as it exists in the automobile industry, based upon hearings that have been conducted both by the administrative branch and the Congress, which, it seems to me, show that here only a few great companies have a peculiar type of monopoly and a peculiar type of control over a vast segment of the retail business of the country, and have sometimes exercised it in a way that manifests something other than good faith.

This legislation, as I understand it, goes no further than to give a legal action in the absence of good faith. And I think there is some question as to the type of remedy, and as to whether it should be penal or compensatory, but I don't know whether that is too material or not.

Mr. McCULLOCH. I don't wish to try to commit you to an expression or an opinion that would be unfair. By way of repetition, I just wanted to be sure in my own mind as we strike out on a new course of action here, if a majority is willing to do so, that we know the kind of a road we are starting on, and where it may ultimately take us as similar questions come up in our economy in other lines of endeavor.

Mr. ALBERT. Well, I think I understand your concern, and your question. But I don't think that the control that the Constitution gives the Congress over interstate commerce, or the action that has been taken under the Interstate Commerce in the field of antitrust laws, has hurt the capitalistic system in any way. I feel that it has strengthened it and enabled it to survive. That is my feeling.

Mr. McCULLOCH. That is all I have.

The CHAIRMAN. Thank you, Mr. Albert.

Mr. Multer.

STATEMENT OF HON. ABRAHAM J. MULTER—Resumed

Mr. MULTER. Mr. Chairman, when I started my testimony I was referring to the report of the Federal Trade Commission, which, after a very exhaustive study—it spent over a year in their investigations—it included in its report not only what it turned up during that year, but what it learned from the investigation of complaints that had been made even before the Congress had directed this all-inclusive study.

When you get to the conclusions in this very voluminous report, you find the headings or titles. The situation as it existed at that time, the evils that were complained of at that time, are just the same as you will hear about during this hearing by this committee. They are the same as they heard on the Senate side in its committee hearings and in the Interstate and Foreign Commerce Committee of this House this very year.

I read from the 1939 report: The first title is: "Concentration in the Motor Vehicle Industry." Then there is "Competition in Production and Prices"; "Competition Among Motor Vehicle Dealers"; "Padding New and Used Car Prices"—that is what we today are calling packing prices—"Dealer Price-Fixing Activities"; "Unfair Methods of Motor-Vehicle Manufacturers in Their Relations With Their Dealers"; "Manufacturers' Treatment of Dealers"; "Abuses of Installment Financing"; "Itemized Invoice Needed for Consumer Protection"; "Deception in Charges for Transportation of Motor Vehicles"; "Sale of Driven Cars as New Cars."

The CHAIRMAN. Mr. Multer, that report considered among other things the distribution, as I understand, of General Motors cars. Is that correct?

Mr. MULTER. It included that, but it covered the entire automotive industry.

You will find that almost every witness is going to refer to the same subject matter. He may use different words, as I did in my statement. My titles may sound a little different, but actually we cover the identical subject matter.

Now one of the principal objections that is raised to this and all the other legislation introduced in this session of Congress is that you shouldn't pick on one industry and legislate against one industry. Well, then, we shouldn't have legislated on the security exchanges, there should be no Security Exchange Act today, there should be no regulation of the railroads, there should be no bank-merger bills, because all of those laws—and there are dozens of others—are directed to specific industries, just as these bills are.

When I sat down to draft the legislation which I introduced in this session, I thought that the thing to do, the approach, would be, bills of general application to cover our entire economic situation where these problems or evils or wrongdoings would crop up. I thought we should have a law of general application that would cover them all.

Well, I say to you, that would be an almost impossible task. What you must do is address yourself to each industry as the testimony is adduced, showing what the situation is in that industry, and how you can cure it.

The CHAIRMAN. I am very much impressed with that argument.

Mr. MULTER. Now, there were several questions raised this morning with reference to the bill that you are considering, which is a counterpart of S. 3879, which passed the Senate in slightly different form from the bill as introduced there. The two bills were identical when introduced, but it has come out of the Senate with some changes.

With all due deference to the Members of the Senate and to the author of the bill, I think they have put the cart before the horse. If you follow the same principle, you will be doing that, too. Every man has a right to go to court today, but the situation in this industry is such that when he arrives—when his proof is completed, his case is dismissed because he has no actionable cause of action.

In other words, the fundamental situation is not changed by this bill as passed by the Senate, and your own bill H. R. 11360 does not change it.

In order for a man to go to court and make a recovery in a civil suit, he first must have a legal right, not a moral right, a legal right; and then he must establish that that right has been violated or impaired or impeded, and then, on top of that, that he has sustained damage.

Now, if you say, when he has proved the violation of a legal right, he shall recover punitive damages, you have given him a cause of action; but if you give him only compensatory damages, then you must inquire, What are the damages in cases of this kind?

Mind you, we are dealing now with contracts, the contract between the dealer and the manufacturer. No matter how unfairly it may have been arrived at, no matter how he may have been coerced into entering into it, on the dealer's part, as against the manufacturer, he still did not have to make the contract if he did not want to. He can get no damages because he, the dealer, accepted a bad contract.

If you are going to say that, "We are going to let him recover damages because that contract is not renewed," obviously, from the report of the committee on the Senate side, they do not talk about a contract that has an option of renewal and is not renewed, but they say that if the contract has expired, or is about to expire and is not renewed, then he shall have a cause of action unless the manufacturer acts in good faith—

Look at the language:

The term "good faith" shall mean the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

Now, that is the language in the House bill. I think that both bills had the same language, then, in section 3:

An automobile dealer may bring suit against any automobile manufacturer—and so forth and:

* * * and shall recover twofold damages by him sustained and the cost of suit, including a reasonable attorney's fee, by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer.

Now, they added on to the Senate version :

Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

In other words, both sides must act in good faith, and it is fair to ask that both sides under a contract act in good faith—but the dealer's contract is about to expire and the manufacturer says, "I am not going to renew."

Well, when does he act not in good faith? When he says to the dealer, "You did not sell enough cars; I am going to put a dealer in here who is going to sell more cars." Is that bad faith?

Or, suppose he says, "I think your service station is not being operated the way that we would like to have it done."

Each of them is going to bring in any number of dissatisfied customers. Their files will be full of complaints from customers who went in for service. And the dealer says, "Well, I have done the best I can for you, but you need a new motor in this car."

You are going to run up against an impossible situation in a bill of this kind unless the first thing you do is to enact a code of fair practice.

Mr. McCULLOCH. If I may interrupt. If that is not done, are we not faced with a law which in effect requires the renewal of contracts or the reexecution of contracts in practically every instance; and wouldn't the same reasoning apply between landlord and tenant, where there was a lease of a storeroom, for instance, which calls for rental based upon the gross business done. Are we not entering into a field in a manner that is wholly new in the field of our jurisprudence?

Mr. MULTER. I am not afraid of the newness of this or the novelty of the section, Mr. McCulloch; but you touched this morning and you have touched now upon a very important constitutional question: Can you make any man make a contract with any other man?

Now, you can lay down a code of fair practice and say, "In all your dealings you must do thus and so; there must be no bootlegging; there must be no delivery of items not ordered; you can charge only for that which is billed"—talking now about extras—"you can give the man a contract for a territory."

This is the first time that I know of where the people against whom the antitrust laws were aimed come in and say, "You cannot do these things because of the antitrust laws." They do not come in say, "This is a good thing, let us do it, change the antitrust law so that we can do it."

The CHAIRMAN. May I ask you this question. Suppose General Motors has a dealer contract with Mr. Smith and Mr. Smith is inefficient, there is no doubt about his being inefficient. Would General Motors have the right to cancel or refuse to renew Smith's contract as a dealer, under this bill?

Mr. MULTER. Well, I should say, even if there is doubt that the man is inefficient, and they come in and say that he is inefficient, "We will cancel out," the manufacturer could make that contention in good faith.

Well, surely, you are not going to say to the manufacturer, "You must keep an inefficient dealer."

The CHAIRMAN. I want to be sure that this legislation is so drafted that the manufacturer, can refuse to renew the contract for that reason.

Now, the point is if all you need is good faith on one side——

Mr. MULTER. Well, I think the Senate version requires good faith on both sides.

The CHAIRMAN. The Senate's report says this, on page 3, line 15 :

Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

Now, that does not cover it.

Mr. MULTER. Yes.

The CHAIRMAN. Now, where is there language to permit the manufacturer to refuse a renewal of a contract under these circumstances?

We have in the report of the Senate the following, on page 5 :

The bill does not prohibit the manufacturer from terminating or refusing to renew the franchise of the dealer who is not providing the manufacturer with adequate representation.

Now, that is only a conclusion in the report.

Mr. MULTER. Yes. And when it got to the floor——

The CHAIRMAN. Perhaps somebody will point out to me something in the bill on which that can be grounded.

Mr. MULTER. When they got to the floor, the question was raised that the bill should provide just that, and they added the proviso that you find at the bottom of page 3 of the bill as passed the House.

The CHAIRMAN. As passed the House?

Mr. MULTER. As passed the Senate. You will find this proviso added :

Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

The CHAIRMAN. That is not the point. The manufacturer simply says, "The dealer is inefficient."

Now, the question is, if the dealer is in good faith, although inefficient, would the manufacturer still have the right to dismiss him?

Mr. MULTER. The way the Senate bill was passed, I would say the manufacturer would have lost his right to cancel out—the manufacturer would have lost his right to cancel, under the Senate version of the bill, regardless of inefficiency, if the dealer is acting in good faith. If the dealer just happens to be a bad dealer and cannot do the job, but if he is acting in good faith and is doing the best he can, that would be a complete answer.

The CHAIRMAN. Then the manufacturer could not dismiss him?

Mr. MULTER. No. The manufacturer could not refuse to renew.

The CHAIRMAN. That would be barbarous, I would think. I think you would have to construe it this way, I will say to the gentleman from New York: if the manufacturer refuses to renew because the dealer is inefficient that does not show bad faith on the part of the manufacturer. And if the manufacturer is not acting in bad faith, I think he is within his rights in not renewing and the dealer could not successfully maintain the suit. Otherwise it would be a barbarous bill.

Mr. MULTER. I think the fault, if I may say, sir, with the drafting of this legislation is that you have provided a remedy, without having first stated what the things are that you want to remedy.

In other words, you have no declaration of policy of the things that you say are wrong in this industry which must be corrected.

The CHAIRMAN. Isn't there a preamble?

Mr. MULTER. No, sir; unless you call the title a preamble.

The CHAIRMAN. Yes; that is the preamble.

Mr. MULTER. You start with your title, which is almost in the nature of a preamble, and then you have your definitions, and after your definitions you then go into the provision that a lawsuit may be maintained.

The CHAIRMAN. Go ahead, Mr. Maletz.

Mr. MALETZ. Mr. Multer, may I say this?

As I understand it, under both the Senate and House bill, the question as to whether the manufacturer is acting in good faith or bad faith is a question of fact to be determined by the jury after receiving evidence of all the circumstances, for example, of the cancellation.

If a dealer has been canceled out because he has not provided adequate representation, presumably what the dealer would do would be to sue the manufacturer. The dealer would have the burden of proof, would he not, of establishing that the manufacturer had acted in bad faith?

But I would assume that under the circumstances, which you and the chairman have been discussing, the dealer would be unable to sustain that burden of proof; is that not correct?

Mr. MULTER. Let us assume that he does. Let us assume that he shows bad faith; he brings in the zone manager or the regional manager from the manufacturer's office who says, "Yes, I didn't like the color of this fellow's tie the day I called on him, and that is why I canceled out"—obviously, bad faith.

The CHAIRMAN. Yes. But if he——

Mr. MULTER. Then what happens? The man has a contract that is cancelable at will or runs for 30 days or for a year.

Mr. MALETZ. Well, it is so——

Mr. MULTER. He has no option to renew. And the day the contract runs out, the manufacturer says, "I am not going to renew your contract."

Now, what are you going——

The CHAIRMAN. At that point, the manufacturer says, "I am not renewing the contract because you are inefficient; you do not give me proper representation." And I assume that charge is true. Certainly the dealer has no claim, or should have no claim, against the manufacturer.

Mr. MULTER. Let us take it the other way——

The CHAIRMAN. Is that right? Do you agree with that?

Mr. MULTER. Let us agree that there where the inefficient dealer—there is no question about his inefficiency—the manufacturer has the right to cancel out and does cancel out; there is no lawsuit, or no right of recovery in a lawsuit.

The CHAIRMAN. Right.

Mr. MULTER. Let us go to the other case, the case you were trying to correct, the case where you were trying to help the dealer. The dealer has run a fine business. He has done well for himself and done well for the manufacturer. But the zone manager's brother needs a franchise, and this is a good place for him and he goes in and says,

"Look. You take my brother as a partner or we are going to cancel out."

The CHAIRMAN. That is bad faith.

Mr. MULTER. Bad faith of the worst kind. Now, where do you go from there?

The CHAIRMAN. Under the Senate bill, you get compensatory damages, having shown that bad faith; under the House bill, you get double damages.

Mr. MULTER. Where is the legal obligation that has been violated to give you your right of action? Just because the manufacturer has acted in bad faith, can you give the man a cause of action?

The CHAIRMAN. You mean that we should spell out in the legislation exactly what "damages" mean?

Mr. MULTER. You will have to first spell out a cause of action.

The CHAIRMAN. That is a cause of action if he does not renew the contract and shows bad faith. That is a cause of action.

Mr. MULTER. For how long must he renew the contract? One year? Ten years, or a lifetime?

The CHAIRMAN. It is not a question of renewal now, it is a question of damages to be determined by the jury under the facts.

Mr. MULTER. I am afraid that anytime this gets to any court, the court is going to say, "You have not established a cause of action. This legislation does not give this man a cause of action of such definiteness that we can enforce it."

The CHAIRMAN. Let me ask you this. Are you in favor of giving some remedy, and if so, what?

Mr. MULTER. Oh, yes.

The CHAIRMAN. How would you?

Mr. MULTER. I say you write into the law a code of fair practice, a code of fair practice, and you indicate there that these things, A, B, C, D, and E—

The CHAIRMAN. How could you do that? A code of fair practice in the law?

Mr. MULTER. I am giving a—

The CHAIRMAN. I would like to work it out with you, but I—

Mr. MULTER. I am giving you a broad definition of what I think you must do.

The CHAIRMAN. You have a bill yourself, have you not?

Mr. MULTER. Yes, H. R. 10310.

(H. R. 10310, referred to, is as follows:)

[H. R. 10310, 84th Cong., 2d sess.]

A BILL To provide for the regulation of motor vehicles on the highways of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "General Motor Vehicles Act of 1956".

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress through the exercise in this Act of its power to regulate commerce, in accordance with which policy all of the provisions of this Act shall be interpreted, to promote safety in the operation of motor vehicles by the general public on the highways of the United States, and to regulate the trade practices between manufacturers of motor vehicles and their franchised dealers and the general public.

DEFINITIONS

SEC 3. As used in this chapter—

(a) "Manufacturer" means any individual, partnership, corporation, association, business trust, or any other form of business enterprise, or any branch or agent thereof engaged in the business of manufacturing or assembling motor vehicles or of selling motor vehicles for resale, or servicing or financing motor vehicles intended for resale.

(b) "Dealer" means any individual, partnership, corporation, association, or any other form of business enterprise, or any branch or agent thereof, engaged in the business of purchasing motor vehicles for resale and of exchanging or servicing motor vehicles.

(c) "Motor vehicle" means any motor driven or propelled vehicle, except airplanes, road rollers, traction engines, power shovels, and other equipment used in construction work and not designed for or employed in general highway transportation, as well as farm and agricultural machinery, and vehicles designed for running on tracks or rails.

(d) "New motor vehicle" means a motor vehicle which has never been the subject of a sale with intent to pass an interest therein and has never been driven, pushed, towed, or propelled over a public highway.

(e) "Used motor vehicle" means a motor vehicle which has been sold, bargained, or exchanged, given away, or whose title has been transferred from the person who first acquired it from the manufacturer or dealer, and so used as to have become what is commonly known as second-hand, within the ordinary meaning thereof, or which has been driven, pushed, towed, or propelled over a public highway.

(f) "Franchise" means the right, privilege, or authorization accorded the dealer by the manufacturer, whether by contract, agreement, or otherwise, to purchase, sell, and service motor vehicles.

(g) "Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

UNLAWFUL PRACTICES

SEC. 4. It shall be unlawful for anyone to sell, ship, transport, drive, push, tow, or propel any motor vehicle in commerce unless accompanied by a manufacturer's certificate of fitness which must state (i) that the motor vehicle and all the parts and accessories thereon have been inspected and found in good working order, safe and ready for operation on the public highways, and in complete accord with all specifications as set forth in all descriptive and advertising matter, and (ii) that the vehicle has been road-tested for five hundred miles and found in good operating condition after having been road-tested for at least one hundred miles at each of the speeds of fifteen, thirty, forty-five, sixty, and seventy-five miles per hour.

SEC. 5. It shall be unlawful for any manufacturer or dealer to sell, ship, transport, drive, push, tow, or propel in commerce a motor vehicle with equipment, parts, or accessories different from or in addition to those specified in the current literature and advertisements of motor vehicles of the same make and model for which an additional or extra price or charge is made or sought to be collected for such equipment, parts, or accessories: *Provided*, That nothing herein shall prohibit the order or shipment of any motor vehicle equipped in accordance with the specifications set forth in a written order or written agreement of the parties, which separately itemizes each additional or extra item by full description and price.

SEC. 6. (a) It shall be unlawful for any manufacturer to sell, ship, transport, drive, push, tow, or propel in commerce any motor vehicle without first having sealed the speedometer thereof so as to prevent tampering therewith or to prevent its operation.

(b) It shall be unlawful for anyone to replace, disconnect, or prevent the normal and proper operation of the speedometer on any motor vehicle or change its reading in such a manner as to mislead or deceive a person as to the usage, mileage, condition, or other character of the motor vehicle.

SEC. 7. It shall be unlawful to deliver a motor vehicle to a retail purchaser unless such delivery shall be accompanied by an itemized invoice of the cash sale price which shall separately set forth the amount attributable to each part,

piece of equipment, and each accessory; Federal excise tax; State or local taxes; transportation; advertising; handling charges; service; motor-vehicle license; motor-vehicle title registration; and any other charge included in the price of the vehicle delivered: *And provided further*, That when a sale of a motor vehicle is made other than on a cash-delivery basis the invoice shall also include the components of the charges added to the sale price by reason of the fact that the vehicle is delivered under a time sale or other agreement, separately stating the amount of each item charged in connection with the financing and the insurance, if any; and also indicating whether or not, and if so, how much of such charges are refundable if the balance is paid before maturity.

SEC. 8. It shall be unlawful for any manufacturer or dealer to charge or collect as a charge for transportation of a motor vehicle or taxes thereon any amount in excess of the actual cost to such manufacturer or dealer of the freight or other transportation charges incurred or taxes payable by the manufacturer or dealer in making delivery of such motor vehicle.

SEC. 9. It shall be unlawful for any manufacturer or dealer to advertise, or cause the advertisement of a motor vehicle in a manner so as to confuse or mislead, or to tend to confuse or mislead, a prospective purchaser as to the price or description of such motor vehicle that is intended to be or has been delivered at the dealer's place of business.

SEC. 10. No manufacturer shall directly or indirectly require any dealer or group of dealers to advertise or pay for the advertisement of the manufacturer's product except by the usual signs at a dealer's place of business indicating he deals in the manufacturer's products.

SEC. 11. It shall be unlawful for any manufacturer to threaten to terminate, to terminate or cancel, or to fail or refuse to renew the contract, agreement, or franchise of any dealer because of the dealer's unwillingness or refusal to purchase parts, accessories, equipment, or tools of any particular type, kind, or description from said manufacturer.

PRICE DISCRIMINATION

SEC. 12. It shall be unlawful for any manufacturer in any number whatsoever, or by any device or method whatsoever, to discriminate pricewise between dealers by way of discounts, rebates, or other allowances to any dealer over and above, or any different from, any discounts, rebates, or other allowances available at the time of such transaction on equal terms to all other dealers. Volume discounts, allowances, or rebates are hereby expressly prohibited.

MANUFACTURER-DEALER RELATIONS

SEC. 13. (a) Every contract or agreement between a dealer and a manufacturer by which such dealer in motor vehicles operates as such under a franchise granted by such manufacturer may include provisions to provide for the termination or cancellation of the contract by mutual consent or upon breach of provisions specifically contained therein, and such contract shall be canceled only for one or more of the reasons stated therein.

(b) Nothing contained in this Act or in any other law shall render unlawful any contract or agreement between a manufacturer and a franchised dealer, in which such manufacturer agrees that such franchised dealer shall have the sole and exclusive right to sell in a specified geographical area and/or for a specific period of time a new or used motor vehicle produced or distributed by said manufacturer.

(c) Nothing contained in this Act or in any other law shall render unlawful any contract or agreement between a manufacturer and a franchised dealer in which such dealer agrees to sell only within a designated geographical area and to refrain from selling outside said area any new or used motor vehicle produced, assembled, or distributed by said manufacturer.

(d) Nothing contained in this Act or in any other law shall render unlawful any contract or agreement between a manufacturer and a franchised dealer in which such dealer agrees not to resell, either directly or indirectly, any current model motor vehicle made by such manufacturer, to any person, partnership, corporation, or other entity engaged in the business of selling new or used motor vehicles other than a person or entity operating under a franchise or authorized dealer agreement with such manufacturer.

(e) Nothing contained in this Act or in any other law shall make it unlawful for a manufacturer of motor vehicles to enforce any agreement authorized by subsection (d) by refusing to sell to, or canceling the franchise of, any dealer who

knowingly engages in the sale of a motor vehicle of current model made by such manufacturer to any person, partnership, corporation, or other entity engaged in the business of selling new or used motor vehicles other than a person or entity operating under a franchise or authorized dealer agreement with such manufacturer.

ENFORCEMENT

Sec. 14. Any manufacturer or dealer shall be entitled to sue for and have injunctive relief, in any district court of the United States having jurisdiction over the parties, to enforce the terms of valid agreements or to enjoin violation thereof, or against threatened loss or damage by a violation of this Act, when and under the same conditions and principles injunctive relief against threatened conduct that will cause loss or damage is granted by the courts, and upon the execution of proper bond against damages for an injunction improvidently granted: *Provided, however,* That the parties may agree to accept the decision of an arbitration body to be composed of three members—one of whom shall be selected by the manufacturer; one of whom shall be selected by the dealer; the third of whom shall be selected by the two appointees, provided the third person so named shall not be a manufacturer or dealer, or a stockholder, officer, or employee of, or person affiliated with, either a manufacturer or a dealer.

Sec. 15. Anyone who shall be injured in his business or property by reason of anything prohibited or made unlawful by this Act may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover twofold the damages by him sustained, and the cost of suit, plus a reasonable attorney's fee.

PENALTIES

Sec. 16. Any person violating any of the provisions of this Act shall, upon conviction for each violation, be fined not more than \$10,000, or imprisoned for not more than one year, or both.

Sec. 17. Whenever a corporation shall violate any of the provisions of this Act, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or participated in doing any of the acts constituting, in whole or in part, such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent, he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both.

SUITS BY UNITED STATES

Sec. 18. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute appropriate proceedings to prevent and restrain such violations and for damages and penalties. Pending final determination of the matter, the court may issue such temporary restraining order or prohibition as shall be deemed just in the premises.

Sec. 19. A final judgment or decree rendered in any criminal prosecution or in any suit or proceeding brought by or on behalf of the United States under this Act to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under this Act as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

Sec. 20. Whenever any suit, proceeding, or criminal prosecution is instituted by the United States to prevent, restrain, or punish violations of this Act, the running of the statute of limitations in respect of each and every private right of action arising under said Act and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof, and the time within which to bring such suit or proceeding shall be extended by the length of time elapsed between the institution and final determination, by appeal or otherwise, of such suit, proceeding, or criminal prosecution.

TECHNICAL AMENDMENTS

SEC. 21. (a) Part II of subchapter C of chapter 33 of the Internal Revenue Code of 1954 (relating to tax on amount paid for transportation of property) is hereby amended by adding at the end thereof the following section:

"SEC. 4274. STATEMENT OF TRANSPORTATION CHARGES.

"(a) REQUIREMENT.—Any person who, in connection with any sale of property collects from the purchaser any amount as a charge for the transportation of such property shall, in any case in which any part of the amount attributable to such transportation is taxable under section 4271 (a), furnish such purchaser a statement showing—

"(1) the amount attributable to such transportation upon which a tax is imposed by section 4271 (a), and

"(2) the amount of such tax.

"(b) TREBLE DAMAGES.—

"(1) RECOVERY BY PURCHASER.—Any person who, by reason of any misrepresentation in the statement required under subsection (a) of this section, is required to pay any amount as a charge for the transportation of property, including the tax imposed thereon, which exceeds the amount actually paid by the seller for such transportation, including such tax, may, within two years after the date of such payment, bring a civil action against the seller to recover three times the amount paid as such transportation charge, including such tax, in excess of that actually charged the seller. Whenever any person successfully maintains an action under the provisions of this paragraph, such person shall be entitled to recover, in addition to the amount provided in the first sentence of this paragraph, a reasonable attorney's fee, to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.

"(2) RECOVERY BY UNITED STATES.—In any case in which a person entitled to bring a civil action against a seller under the provisions of paragraph (1) of this subsection, shall fail to bring such action within the period of time prescribed therein, the Attorney General is authorized to bring a civil action against the seller in the name of the United States, within two years after the expiration of such prescribed period of time, to recover three times the amount paid as a charge for the transportation of the property purchased, including the tax thereon, which exceeds the amount actually paid by the seller for such transportation, including such tax, plus the sum of \$500 as additional costs of the suit, the amount recovered to be paid into the Treasury of the United States.

"(c) CROSS-REFERENCES.—

"(1) For penalty for false statement to purchasers relating to tax included in purchase price, see section 7211.

"(2) For penalty for failure to furnish statement required by this section or for furnishing false statement, see section 7276."

(b) The table of sections for such part II is hereby amended by adding at the end thereof the following:

"Sec. 4274. Statement of transportation charges."

SEC. 22. (a) Subchapter B of chapter 75 of the Internal Revenue Code of 1954 (relating to offenses in connection with certain taxes) is hereby amended by adding at the end thereof the following section:

"SEC. 7276. MISREPRESENTATION IN CONNECTION WITH TAX ON AMOUNT PAID FOR TRANSPORTATION OF PROPERTY.

"Any person required under the provisions of section 4274 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement showing the information required under section 4274, shall, for each such offense, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both."

(b) The table of sections to such subchapter B is amended by adding at the end thereof the following:

"Sec. 7276. Misrepresentations in connection with tax on amount paid for transportation of property."

SEPARABILITY OF PROVISIONS

SEC. 23. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

EFFECTIVE DATE

SEC. 24. This Act shall take effect ninety days after its enactment.

Mr. MULTER. First, you have a declaration of policy, and the declaration of policy—mind you, in my declaration of policy I seek to protect the buying public as well as the dealer. And I think it is just as important, if not more important, to protect the man who buys and uses the car on the street as it is to protect the dealer. Today he does not get the protection that the manufacturer advertises it guarantees to him.

Now after your declaration of policy you have a section on definitions. And then we come to unlawful practices. You specify what shall be unlawful.

The CHAIRMAN. What page is that?

Mr. MULTER. On page 3 of my bill, beginning with section 4.

Now I don't pretend that you must take every one of these practices and designate them unlawful, nor do I pretend that it is all inclusive. The committee may add some to it. But I think that is the manner in which you must proceed.

The CHAIRMAN. Your bill regulates motor vehicles on the highways of the United States; doesn't it?

Mr. MULTER. That is only a small part of it. And then in section 5:

It shall be unlawful for any manufacturer or dealer to sell, ship, transport, drive—

and so forth—

with equipment, parts, or accessories different from or in addition to those specified.

Nothing shall prevent an order for extras, if the order is in writing. Then you have section 6:

It shall be unlawful for any manufacturer to sell, ship, transport—

and so forth—

any motor vehicles without first having sealed the speedometer thereof so as to prevent tampering therewith, or to prevent its operation.

That is to prevent this business of riding the car over the road from place of assembly to place of delivery, to the consumer. In other words, he is actually getting a used car today delivered to him as a new car, because the speedometer is connected when it is ready for delivery to the buyer at the dealer's shop.

Then I have a provision:

It shall be unlawful to deliver a motor vehicle to a retail purchaser unless such delivery shall be accompanied by an itemized invoice of the cash-sale price—

and so forth, to prevent this business of phantom freight charges.

Then I have the provision:

It shall be unlawful for any manufacturer or dealer to charge or collect as a charge for transportation—

anything except what is actually charged therefor.

And then a provision :

It shall be unlawful for any manufacturer or dealer to advertise, or cause the advertisement of, a motor vehicle in a manner so as to confuse or mislead, or to tend to confuse or mislead, a prospective purchaser as to the price or description—

and so forth.

And then this provision :

No manufacturer shall directly or indirectly require any dealer or group of dealers to advertise or pay for the advertisement of the manufacturers' product.

Mr. MALETZ. May I ask you this question. Going over your bill rather hurriedly, you have sections 13 (b) and (c).

Mr. MULTER. That is right.

Mr. MALETZ. Section 13 (b) provides that—

nothing contained in this Act or in any other law shall render unlawful any contract or agreement between the manufacturer and a franchised dealer, in which such manufacturer agrees that such franchised dealer shall have the sole and exclusive right to sell in a specified geographical area.

And then subsection (c) :

Nothing contained in this Act or in any other law shall render unlawful any contract or agreement between the manufacturer and a franchised dealer in which such dealer agrees to sell only within a designated geographical area, or to refrain from selling outside such area any new or used motor vehicle produced, assembled, or distributed by said manufacturer.

Now, wouldn't those provisions of the bill be contrary to the policy of the antitrust laws?

Mr. MULTER. I am aware of the fact that the Attorney General has rendered an opinion to that effect. I think his opinion is wrong. But right or wrong, if this Congress agrees that it is wrong for the law to so provide, then I think you must enact legislation to clearly provide, it is wrong.

Presently the manufacturer says to his dealer, who looks for an exclusive franchise with limitation of area, "I can't do it, I will be violating the antitrust law," and refers to the opinion as the reason why he can't do it.

Let's leave that to a matter of contract between the parties. I know there is a division among the dealers as to whether that is good or bad.

The CHAIRMAN. As I understand it, you suggest that we follow the pattern of your proposed bill, which is, of course, a broad one, by inserting under the Senate or House bill some sort of standards or criteria which would guide the courts and dealers and manufacturers in the future.

That is your suggestion?

Mr. MULTER. That is my suggestion, sir.

Now, whether you will adopt all or some of these, whether you will adopt a provision prohibiting bootlegging or not, or price discrimination—and there is price discrimination in this industry today—their volume discounts are in direct violation of the Robinson-Patman Act.

The CHAIRMAN. Of course, we start out with the idea of protecting dealers from this monolithic duopoly, that is, General Motors and Ford.

Now, if we keep that in mind, if we seek to protect the dealers against these corporations, hadn't we better keep our sight trained on that alone rather than going beyond that?

Mr. MULTER. I think, Mr. Chairman, with all due respect to that view, that you are missing the boat and you are not doing your full job if you do not also write into any law you write protection for the driving public.

You must go beyond just protecting the dealer, you must protect the buying public, too, and you can do it.

The CHAIRMAN. I don't want to argue with you about your bill, but I don't think you give the public protection when you give exclusive selling rights in certain areas. That is not protecting the public.

Mr. MULTER. As I said, there is a tremendous difference of opinion even among the dealers; you will find some dealers that say "We should have this exclusive contract for a certain territory," and others that say no. The little fellow that can't sell his allotment in his area wants to rove all over the country selling it. And the other fellow that can sell in his area doesn't want the other man coming in.

You may never resolve that, but I say again, that should be a matter of contract between the dealer and the manufacturer.

The CHAIRMAN. I might say this: I have been studying the anti-trust laws for many years, as a member of this committee and otherwise, and during the period when I have been on this committee I have always deemed that activity which you now seek to legalize is a violation of the antitrust law.

Mr. MULTER. That is right.

But in the light of our experience, in the light of what has gone on through these years, in the light of all the testimony adduced before the congressional committees—and you will hear much of it again during these sessions of the committee—I think it is time to review that.

You may not change your mind about it, but certainly you ought to give it very serious consideration as to whether or not the time hasn't arrived—at least, as to that part of it which applies to this industry, must be changed.

The CHAIRMAN. Let me ask you this:

Considering these bills with their limited range which are before us, where the State licensing statute, as for example, in Colorado, requires a court order in any case before a cancellation of a franchise of a dealer becomes effective, can you tell us what effect the passage of the bill before us would have on that statute?

Mr. MULTER. Has the statute been tested?

The CHAIRMAN. It is the law on the books. But the question is what effect that law we are attempting to pass will have on that situation.

Admiral Bell, you can answer that.

Mr. MULTER. I would say offhand that if a court order is necessary as a condition precedent to cancellation, any cancellation without it certainly would give rise to a very strong cause of action under this bill that you are considering, if it is enacted.

The CHAIRMAN. You asked a question whether the law has been tested. I understand General Motors has proceeded to test it by a three-man court.

Mr. MULTER. You say they are testing it in the courts now?

The CHAIRMAN. I understand it is being tested now.

Let me ask you this other question—

Mr. MULTER. In other words, if that kind of a law is constitutional, then certainly this law that you are considering now would be con-

stitutional, and you would be able to tell these manufacturers, once you issue a franchise, that is a franchise in perpetuity.

The CHAIRMAN. We use the term "automotive vehicle"—do you think that should include tractors and motorcycles and other such vehicles?

Mr. MULTER. Not unless there is proof adduced before your committee which would show that the same abuses apply in that phase of the industry. I don't know what the situation is with respect to farm machinery, I don't know what it is with reference to buses, motorcycles or bicycles.

The CHAIRMAN. Do you think the pending legislation, if adopted, would apply to existing contracts?

Mr. MULTER. You run into the question of retroactivity there. Certainly, this bill, unless you specifically provide that it shall be retroactive in effect—the very first rule of construction is that legislation is not retroactive in effect but prospective only, unless the language specifically and clearly indicates that it is retroactive.

The CHAIRMAN. If it does not apply to existing franchises, the bill would not have much applicability, would it? There are a lot of these franchises that are—

Mr. MULTER. Now, if you declare the public policy to be along this certain line, that public policy can be enforced as to existing contracts.

But, if you are going to make it retroactive and say that the public policy which we announced today will be thus and so, and that it will give a cause of action as to anything that was not contrary to that public policy heretofore, that is, that acts or conduct that occurred in the past with reference to an existing contract because of change of public policy or because of an enunciation of a new public policy, that would be retroactive in effect, and I believe your bill would be unconstitutional even if you specifically sought to make it so.

I believe that a bill which will be prospective in its outlook—as far as future conduct is concerned if it says, "Anything you do hereafter, after this, even under the existing contract"—that that would be good, provided that you do not go so far as actually to deprive the man of any property right under the contract. You could not deprive him of his rights. You could not, under the guise of public policy, take away from this man his property; but if you say that hereafter, in interpreting these contracts, you must pursue this course of conduct because the public policy of the country requires you to and if the law makes it a violation to act contrary to such policy, after enactment of the statute—I think it would be enforceable.

The CHAIRMAN. Now, would you have a statute of limitations?

Mr. MULTER. I have not examined into that, but I am certain that the statutes of limitations that are on the statute books today would apply.

Now, they have different statutes in different States. For instance, in the State of New York, under the State law, the general statute of limitations in almost every instance is 6 years—

The CHAIRMAN. I know it varies from State to State.

Mr. MULTER. That is right.

The CHAIRMAN. From 1 year to 6 years generally.

Mr. MULTER. That is right.

The CHAIRMAN. If you do not put a statute of limitations in this act, then the statutes of the State would apply, and they would vary.

Mr. MULTER. Yes, they would vary from one place to another; which would not be good.

The CHAIRMAN. That is right.

Mr. MULTER. I think it should be uniform.

The CHAIRMAN. To have a uniformity which would provide for some period of time?

Mr. MULTER. Yes, and I think, having that in mind, that uniformity, at least to that extent, would be a very good provision of the bill. Your bill should have a statute of limitations written into it.

The CHAIRMAN. One further question: What is the status of your bill?

Mr. MULTER. I testified in support of the bill on both the House side and the Senate side. The House subcommittee has not yet met in executive session on that or any other bills on which they have taken testimony. The hearings are closed, but they have not yet acted or reported on the bills.

Now, I may point out one thing with reference to the remedy that you provide. You provide a remedy by court suit.

Suppose they write into these contracts an arbitration clause. Would you say that the man, nevertheless, can go to court or should go to court?

You see, in my bill, 10310, in setting up the enforcement provisions, I give them the right to go to court; and I also give them the right to have arbitration, if they so agree, the arbitration to be by a board of arbitrators of three, one appointed by the manufacturer, one by the dealer and the third not to be affiliated with the industry in any way.

The CHAIRMAN. Well, neither bill precludes, arbitration, does it? That would be voluntary.

Mr. MULTER. But if you don't put into the bill a provision as to what kind of arbitration, then your contract coming forth from the manufacturer could have a provision permitting him to name the arbitrator.

The CHAIRMAN. And if they are unable to agree, they can go to court.

Mr. MULTER. But you still have the situation—what kind of a contract the dealer is going to get. Today he must take the contract offered to him by the manufacturer. You do not need any of this legislation if the manufacturer is going to sit down and deal in good faith and arm's length, and fully and openly negotiate with the dealer—but they won't do it. They haven't done it. These bills, H. R. 11360 and S. 3879, do not require it.

The CHAIRMAN. Admittedly. But as Senator O'Mahoney this morning said, the motor companies have become so concerned that they are not likely to give reasonable cause—

Mr. MULTER. No, I do not go along with that. They were chastened immediately after this report came down in 1939 [exhibiting document]; but for how long? And, now they are coming forward and telling us, "Leave this up to us, let us police the industry. We can do the job."

If this session closes without legislation, you can expect trouble again. The manufacturers will not reform for very long.

The CHAIRMAN. I may say that if the same party controls this House in the new session, the motor companies better watch out if they engage in coercive practices and their representatives who are in this room will, I hope, bring that message back to their principals.

Mr. MULTER. Now, let me pursue this one step forward, as far as the Senate bill is concerned.

I don't know whether you have in mind going along with the Senate version on compensatory damages, or staying with your version of double damages, and I do not want to put the committee in a position of giving an expression of opinion at this time.

The CHAIRMAN. I think at this point I may say that probably when I drew my bill I did not realize how punitive the damages were going to be—

Mr. MULTER. Let us consider that for a moment. I said that unless you provide for a penalty or for punitive damages there will be no recovery. After the plaintiff dealer has established his cause of action, and the court says, "Now, come forward and let us have your damages"—what are his damages?

The CHAIRMAN. It is very difficult to say, and I would not—

Mr. MULTER. Let me pursue it, Mr. Chairman.

The CHAIRMAN. You cannot anticipate all of those—

Mr. MULTER. Let me pursue it for a moment.

The CHAIRMAN. We are pioneering here.

Mr. MULTER. And that is why I want to pursue this with you for a few moments.

Assume I am representing the dealer and am trying my case before you as the judge, and I start to offer as part of my proof of my damages the evidence of profits, what they have been over the years that I have had this franchise, and I say, now, that I want to offer this proof so that you will have some idea of the profits I am going to lose in the years ahead and I want compensation for my loss of profits during each of the years that I would have had that franchise if it had not been canceled or if it had been renewed.

The CHAIRMAN. Well, that strikes me that that is the best proof, as to what the profits might be—

Mr. MULTER. Good—

The CHAIRMAN. How could you prove any loss—I would consider that kind of evidence revelant or material—

Mr. MULTER. But I do not think it comes within the definition of "compensatory damages."

The CHAIRMAN. Why not? How can you prove compensatory—

Mr. MULTER. Compensatory damages are, in my opinion, your actual losses, not prospective losses that might occur in any one of several events even if there had been no cancellation.

The CHAIRMAN. Do you feel that the word "damages" standing alone is better?

Mr. MULTER. Certainly I urge strongly that the word "compensatory" must be taken out, because the word "compensatory" will be limited to actual damage.

If he owns the building, the building has value, no matter how you are using it; if he has a lease, the leasehold has value, no matter how he is using it; and as far as his inventory is concerned, I think that every one of these franchise agreements requires the manufacturer to take back the inventory at cost, so he has lost nothing there, and—

The CHAIRMAN. I think your point is well taken. If you use the word "damages," you will have broader coverage than if you use "compensatory damages," is that right?

Mr. MULTER. Yes, with the probability—well, with the possibility of the court, nevertheless interpreting it to mean only actual damage.

The CHAIRMAN. That is all we want.

Mr. MULTER. What will he get there? If he makes out a cause of action, he will get attorneys' fees, and maybe 6 cents. Assuming that the court is going to take into account his prospective loss of profits, for how many years? You have arrived at the average earnings during the last 10 years, or 5 years, or whatever it may be of \$100,000 a year—for how many years are you going to give him those lost profits?

The CHAIRMAN. Well, it is like a negligence case, the man gets his damages.

Mr. MULTER. That is right—

The CHAIRMAN. And the previous decisions will tell us what proof can be offered; and, as time goes on in a case of this sort, after passing this bill, it will be more or less standardized. But in the beginning the damages that the man alleges are very indefinite, depending upon many things—

Mr. MULTER. It certainly is; it depends on what he is doing, what he has earned, how he has—

The CHAIRMAN. That is what you are going to have here, I think—

Mr. MULTER. The stumbling block to recovery of substantial damages, which these bills do not remove, is the question of whether you can write into law a provision giving to a contract a term of years, where none has been provided by the parties. These bills attempt to hurdle that obstacle by giving the court the right to speculate as to whether it will be 1 year, 2 years or a lifetime. Each court will pull out of the air, whatever period it likes. The same court may apply different terms to each lawsuit. In a jurisprudence, which declares contracts expire at will, where the parties fail to agree on a specific term. You cannot permit that.

I am afraid that if you do not write into this bill the words "punitive damages," or provide for penalties, specific penalties, you are going to give this man a cause of action without a right of recovery of any money.

The CHAIRMAN. In other words, you think we should have penalties in the bill?

Mr. MULTER. Oh, yes.

The CHAIRMAN. In addition to damages?

Mr. MULTER. Yes; because otherwise he will walk out of court with the satisfaction of having been told by the court and jury: "You are right, but there is nothing that this man owes you."

The CHAIRMAN. That is something to consider, whether we should have sanctions, penalties, as a matter of law.

Mr. MULTER. You gentlemen undoubtedly will be told how the automobile dealers of the country are thriving and have done so well through the years.

In that connection, may I anticipate and give you this answer to that? In the June 1956 Dun's Review, there are statistics on failures by divisions of our industry. Incidentally, I think you will all agree that big industry and big companies have been not failing and are not failing; they are not going into bankruptcy. Some of them are liquidating and taking their capital gains, but they are not folding up because of adverse conditions or inability to earn profits.

In the automotive group of the retail trade in the 4 months of 1956, there were 232 bankruptcies as against 157 in the same period of

1955, and the total liabilities for the 4 months of 1956 were \$9,900,000 against the same 4-month period of 1955 of \$3,800,000.

You will hear from the representatives of the automobile dealers, and I think they will make out a pretty good case of their need for help.

I think, Mr. Chairman—

The CHAIRMAN. We certainly know that the dealer needs a lot of help now. I read with great interest last night an article in the current issue of *Atlantic Monthly* which called attention to the glut of cars that were rammed down the throats of the dealers by the three big manufacturers. One dealer now is offering a vacation to Bermuda if you buy one of his cars; another is offering a Geiger counter, and with that you can find uranium, and if you do not find the uranium when you get his car, he will give you 10 shares of uranium stock. I do not know what value it would have.

Another dealer provides that if you buy one of his Pontiac cars, you get a discount of \$1 per pound of weight of the man and his wife.

I do not know how much weight that would be, but it would be a discount.

Another man offers, I think, 2 Chevrolet cars at \$999, but there are only 2 in the shop; so you have to race there to get the 2. I do not know what kind of crowd went after those two cars.

But that article shows the desperate plight of the dealers. Of course, it also shows that in the period of 1953-54, which was called a lush period, that the dealers made a great deal of money and that prior thereto they also made considerable sums of money. And there is a repetition of the testimony of Mr. Curtice before one of the Senate committees that the squawks are mainly coming from those dealers who made these vast sums of money in those lush years who now are put to it to sell the cars that are being offered to them.

There is no doubt that the dealers are being hard pressed now to sell their cars.

The important thing is that it is a very anomalous situation in our economy: Three huge companies can force and ram down the throats of dealers such a vast number of cars.

There was undoubtedly the prospect of a glut of cars in this country; yet the manufacturers had the power to do these things.

There is where the danger lies, that these companies should have that power to be able to accomplish that kind of evil. It is an evil.

Mr. MULTER. You are going to be told, too, I am sure, that this year the manufacturers have not done so well. I think that the statistic is that they have done about 13 percent less in profits this year than last year. But bear in mind these figures: In 1953, General Motors earned 20 percent after taxes and bonuses on its capital investment; in 1954, 24 percent; in 1955, over 28 percent.

Now, the 13 percent less does not bring that down to 15 percent. It is 13 percent of the 28 percent worse this year so far than last year.

The CHAIRMAN. Am I correct in stating that last year, calendar year 1955, General Motors had a gross profit of about \$1 billion?

Mr. MULTER. That figure sounds right to me. I could get you the exact figure—I am sure I have it here somewhere—and submit it to you for the record. But that figure sounds right to me.

Incidentally, when the manufacturers are before you, I trust you will pursue them on this question of bootlegging. They will tell you

about what a great job they are doing with their dealers today and how they protect them and are really rendering a fine public service in that connection.

I have in front of me, and I will leave it with you, a photograph of a Packard agency, and the sign in the window takes up one entire window right on the corner, a Packard agency, an authorized Packard dealer: "1956 Oldsmobiles, all models, big saving."

The CHAIRMAN. What was that?

Mr. MULTER. "1956 Oldsmobiles, all models, big saving."

Now, the point I am making is that this is typical of the so-called bootlegging that is going on throughout the country, not only the used-car lot selling new cars, but even so-called authorized dealers carrying automobiles that are supposed to be handled only by so-called exclusive franchise dealers of other companies. The manufacturers do nothing to prevent this practice, because all they are interested in is the volume sales.

The CHAIRMAN. Is that all?

Mr. MULTER. There is one other point I would like to touch on very briefly. I have touched on it in my statement.

The CHAIRMAN. I hope you will not be too much longer.

Mr. MULTER. I will be less than 5 minutes.

The CHAIRMAN. We have not finished this morning's witnesses.

Mr. MULTER. A practice grew up among the dealers of sending men into military installations from which the boys were being sent home, and selling them cars there, making all sorts of misrepresentations to the men.

A similar situation occurred in the insurance industry, and the Defense Department found insurance salesmen were going into these places and selling the men insurance under false representations and outright fraud.

But when that matter was called to the attention of the Secretary of Defense, he immediately issued a directive and made every base commander responsible, required him to issue licenses to the insurance salesmen and made him responsible for the actions of these salesmen so as to be sure that the men and the service were not taken advantage of in the sale of insurance.

Now, when I learned of this practice in the automobile industry, I sent off a letter to the Secretary of Defense, Mr. Wilson, and called his attention to it. I did not ask him to do what he did in the insurance business; I did not ask him to make his commanding officers responsible. I merely asked him to issue a directive to his commanding officers requiring them to alert the men under their command to these fraudulent practices. And I said to him, "Don't predetermine the question. Don't make a finding of fraud or misrepresentation, but just tell these commanding officers that they must alert their men to be on guard against this thing."

And I got back from the gentleman, the Secretary of Defense, a letter saying that they could not do that; that would be restrictive of private enterprise.

In other words, what is good for General Motors is good for the country; what is bad conduct by the insurance companies, is not bad conduct by General Motors.

That situation was called to his attention as far back as September 1955.

My last letter to him on September 28, 1955, is still unanswered, except that the manufacturers have sent their direct sales representatives into those places to try to garner the business which the dealers were getting before.

That, Mr. Chairman, completes my statement unless there are some other questions.

The CHAIRMAN. The record will be left open for any changes or additions you want to make.

Mr. MULTER. Thank you, sir.

The CHAIRMAN. Thank you very much.

At this point in the record we will include the statement of our colleague, Hon. Kenneth A. Roberts.

(The statement of Mr. Roberts, referred to, is as follows:)

STATEMENT OF HON. KENNETH A. ROBERTS, MEMBER OF CONGRESS, URGING ADOPTION OF H. R. 11360 AND S. 3879 ON AUTOMOBILE DEALER LEGISLATION

Mr. Chairman, I greatly appreciate this opportunity to testify in behalf of S. 3879 and H. R. 11360, the so-called automobile dealer's day in court bill. This legislation is of paramount interest to the many automobile dealers in my district and to all the dealers throughout the Nation. I feel that the enactment of this legislation will prove beneficial to the entire Nation—the automobile manufacturers, the automobile dealer, and the American consumer public.

The need for this legislation has developed as a result of the inequitable location of the vast economic death-dealing power solely in the hands of the automobile manufacturers. Today 3 large automobile manufacturers produce 95 percent of our Nation's cars. These cars are sold by the more than 40,000 independent local automobile dealers, truly small-business men, located from coast to coast and border to border. The average investment made by each of these automobile dealers is \$118,000. The total investment of the independent franchised dealers is about \$5 billion; and they employ about 667,800 persons. In contrast to these thousands of small-business men, the manufacturers—namely, the Big Three—have a total investment of \$7½ billion and employ about 780,000 persons. Thus, this industry which is divided into two almost equal halves with respect to total investment and employment, however, is not in reality at all equal. One-half of the industry has the power to control and/or destroy the other half. The Big Three can club into submission 40,000 independent small-business men unless they play the game the way the giants call the plays.

The key to controlling the dealers, of course, is the fact the giants can terminate a contract now on 90 days' notice (until a short while ago, it was only 30 days). In the dealer's contract with the manufacturer, the dealer is forced to relinquish practically all his rights. This gives the manufacturer the power to command obeisance; and the dealer is left with no protection and no recourse to make the manufacturer act in good faith with respect to the contract. The dealer survives only at the mercy of the manufacturer. I believe the subservient, impossible situation this type of arrangement can create is self-evident to this committee.

The enactment of the legislation now before this committee could remedy this very bad situation. The enactment of S. 3879 (and H. R. 11360) would give the dealer the right to go into court and lodge a suit in the Federal district court should the dealer feel that the manufacturer has acted in bad faith with respect to their contract. The suit would not require the manufacturer to prove good faith performance with respect to the manufacturer-dealer contract, but would require the dealer to prove the manufacturer's bad faith performance.

The nature of the contract between the manufacturer and the dealer is by its very nature a strange one. It is not the usual situation when the independent retailer can purchase from several sources of supply. In this case, he purchases from one. The dealer is thereby the captive buyer of a giant seller who can impose economic death on a whim if he so wishes. And this can be done regardless of how long the dealer may have been in business and regardless of how much money he may have invested in the business—often building display rooms in accordance with the manufacturer's directions, etc. Past history shows that franchises have been revoked at the capricious whim

of the producer. And in the past the courts have tossed out any such suits which have been brought to it because the manufacturer in negotiating the contract has required the dealer to sign away practically all of his rights. The legislation now before the committee, if enacted, would create a cause of action in the Federal courts where none has previously existed. This bill would simply allow a dealer to maintain in court, a suit similar to that which 99.44 percent of all other businessmen in the United States can maintain in court.

I urge the committee to approve S. 3879 (and H. R. 11360). The enactment of this legislation will help curb monopoly; it will help preserve small businesses from being absorbed by concentrated big business which at this time holds the power of life or death over more than 40,000 independent small-business men. The big business in this case, operates not only on a nationwide basis, but also upon a worldwide basis, but the small-business men dealers—independently financed and run—just operate locally. Certainly, because of this unique combination of the interstate and intrastate activities of these two parties, the determination of good faith in such franchises and contracts, is clearly within the jurisdiction of the Federal courts for determination.

The need for this judicial review for the protection of the dealers' rights became glaringly evident during the Senate investigations, conducted by the Interstate and Foreign Commerce Committee and the Judiciary Committee. As a result of these congressional investigations, the automobile manufacturers have begun to mend some of their ways and have eliminated some of the abuses previously practiced. The enactment of S. 3879 (and H. R. 11360) will simply assure the independent automobile dealers and the American public that this progress will not be lost when the congressional spotlight is turned off these high-handed practices.

I personally feel that the enactment of this legislation will create an era of good will and good feeling and stability in the automobile industry. It will reaffirm the American belief in the right of self-protection. I urge the committee to report this legislation in the very near future so that it may have final approval before the adjournment of Congress.

The CHAIRMAN. There were to be three witnesses this morning: Admiral Bell, executive vice president of the National Automobile Association; Frederick M. Sutter, a Dodge-Plymouth dealer of Columbus, Ind., and also the first vice president of NADA, and also Prof. Charles M. Hewitt, Jr., assistant professor of business law, Indiana University.

Now, Admiral Bell, I think you wanted to make a statement.

Mr. BELL. Yes, sir; very briefly.

STATEMENT OF FREDERICK J. BELL, EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION; ACCOMPANIED BY FREDERICK M. SUTTER, FIRST VICE PRESIDENT, NADA; PROF. CHARLES M. HEWITT, JR., ASSISTANT PROFESSOR OF BUSINESS LAW, UNIVERSITY OF INDIANA; AND ROWLAND KIRKS, COUNSEL, NADA

Mr. BELL. I am Frederick J. Bell, executive vice president of the National Automobile Dealers Association, and I would like to say, Mr. Chairman, that in the present session of the Congress more than 30 bills have been introduced in the general area of factory-dealer relationships in the automobile industry. And we of NADA are extremely grateful to the author of each one of those bills.

However, we are here today to address ourselves solely to H. R. 11360.

Now, there are thousands of dealers across the country who would be delighted to appear here in behalf of this bill.

We dissuaded them from it. We persuaded them not to come here. And the three of us, Professor Hewitt, from the School of Business Administration of the University of Indiana; Mr. Sutter, who would speak as a dealer and an officer of the association, and I, who would speak the reflective views of the vast majority of the franchised dealers of the country—we three have our prepared statements here, and we are ready and willing and able to go ahead with them.

However, we are extremely well aware of your difficulties with regard to time. And therefore we are quite willing, with your permission, to file these statements with your committee, and to request your permission to file supplemental statements should we consider that desirable.

And I should also like permission to appear later on in the hearings, if we feel that the testimony of subsequent witnesses might need clarification before the committee.

If that permission is granted, we shall simply file our statements now for the record.

The CHAIRMAN. You certainly have that permission.

(The prepared statements of Frederick J. Bell, executive vice president, National Automobile Dealers Association; Charles M. Hewitt, Jr., assistant professor of business law, Indiana University; and Frederick M. Sutter, first vice president, NADA, are as follows:)

STATEMENT OF FREDERICK J. BELL, REAR ADMIRAL, USN (RETIRED), EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman, my name is Frederick J. Bell. I am executive vice president of the National Automobile Dealers Association.

I am delighted to be here, Mr. Chairman, at your request, to testify on behalf of H. R. 11360—a bill that is designed to provide for good faith in the working arrangements between automobile manufacturers and their franchised dealers and to give to the dealers at long last the opportunity of sharing with their fellow Americans the privilege of appearing in the Federal courts and having their case heard.

Gentleman of this committee, each of you is an attorney. It must, therefore, come as an even greater shock to you than it was to me, than it was to our neighbors who are not lawyers, to learn that the automobile dealer, alone among businessmen to the best of my knowledge, has been deprived of one of the rights that all of us regard as so basic a privilege of any American.

Let me cite just one example. Others will be given you by witnesses who will follow me.

I refer to the Congressional Record of June 19, 1956, page 9517, and I quote a statement made by Hon. Joseph C. O'Mahoney:

"Senator O'MAHONEY. Let me read to the Senator from Ohio what the report says about one of the cases:

"Representative of the thinking of the courts is the decision in *Ford Motor Co. v. Kirkmyer Motor Co.* (65 F. 2d 1001, C. C. A. 4, 1933), where the court stated:

"'While there is a natural impulse to be impatient with a form of contract which places the comparatively helpless dealer at the mercy of the manufacturer, we cannot make contracts for parties or protect them from the provisions of contracts which have been made for themselves. Dealers doubtless accept these one-sided contracts because they think that the right to deal in the product of the manufacturer, even on his terms, is valuable to them; but after they have made such contracts, relying up on the good faith of the manufacturer for the protection which the contracts do not give they cannot, when they get into trouble, expect the courts to place in the contract the protection which they themselves have failed to insert."

"There is case after case of that kind—showing that in the present state of the law, the dealer is absolutely at the mercy of the manufacturer. There are cases in which the franchises are terminable without causes, after the dealers have invested large amounts of capital of their own."

The purpose of the bill introduced in the Senate by Senator O'Mahoney and in this body by the chairman of this committee, is, very simply, to remove this long-standing inequity, to certify that good faith is an inherent part of the contract between the manufacturer and dealer, and to allow the dealer to have his day in court.

The bill was neither hastily conceived nor impetuously drafted. Its simple language represents the work of serious men over a long period of time, and the wishes of hopeful men over a much longer period of time. We do not maintain that it is perfect. Few things are. If those who oppose this bill submit sound reasons as to why the bill in its present form will not attain the purpose for which it is designed, and if they offer amendatory language which in your judgment will produce a better bill, I am confident that you will give serious consideration to such changes.

The men whom I represent are not too interested in the mechanics of legislation. They are, though, deeply concerned with the obvious need for good legislation to be enacted in this session of the Congress, which will have the effect of placing them in a position of equality with their fellow citizens before the bar of justice.

Perhaps I should say a word about NADA.

The National Automobile Dealers Association is a national trade association of new car and truck dealers. Its membership varies in number between 29,000 and 32,000, primarily because of the rapid turnover among dealers. At present, there are approximately 30,000 dues-paying members on the rolls of the association.

The association was established in 1917. Its purposes are :

1. To promote a high plane of business ethics for those engaged in the retail motor vehicle business.
2. To encourage and promote a spirit of cooperation among automobile dealers and their affiliation with and support of local and State associations and the NADA so that interests of all automobile dealers to the general public in relation thereto may be best served.
3. To encourage and assist in the formation of local and State associations and seek to merit the cooperation and support of the NADA.
4. To endeavor to raise to the highest degree the standards, ethics, and practices of automobile merchandising to the end that the trade, through efficient management, may enjoy the opportunity for profitable operation and the building up of financial security.
5. To seek through cooperative efforts the correction of unfair or unbusinesslike practices.
6. To conduct such investigations, studies, and researches as may be necessary and advisable to compile factual data and gather information the knowledge of which would be useful and valuable to the trade toward improving the efficiency of its operations.
7. To oppose discriminatory legislation relating to the motor-vehicle retailing trade, and promote model laws and the enactment of such legislation as will benefit the trade and the public, recognizing the principle of self-determination in each State.
8. To issue such trade publications as the board of directors may authorize.
9. To promote street and highway safety.

As executive vice president of the association, my job is to represent the automobile dealers of America; not just Ford dealers or General Motors dealers or Chrysler, American Motors or Studebaker-Packard, but 30,000 small-business men who sell every make of automobile that is manufactured and who do business in every State of the Union.

These men belong voluntarily to a national association. They voluntarily pay their dues and they may voluntarily leave the association whenever they wish.

We do not—cannot—take any punitive action, any coercive action against them. We cannot threaten them, force them or intimidate them.

In such a climate they can state their views freely and fully, with no obligations save the obligations they owe to their conscience.

Furthermore, these men are the makers of policy which is transmitted to me for action through an elected board of directors consisting of 54 men of whom are General Motors, Ford, Chrysler, American Motors and Studebaker-Packard.

Therefore, when I appear before a committee of Congress, I do so as the spokesman for the retailers of America's No. 1 industry. Because these men, as I said a few moments ago, maintain a relationship with NADA that is fully voluntarily, it cannot be expected that there will ever be complete unanimity in a matter so

grave and of such lasting consequence as the one that you are considering this morning.

Yet, let me temper that remark by saying that I do not believe there is a single member of NADA who wants to be denied the right to have his case heard in court or who wants to operate in an industrial situation where good faith may be lacking.

I dare say that some of the dealers who are scheduled to testify before this committee later on today and tomorrow will oppose the bill now pending and I am confident that they will do so in good conscience. However, I suggest to you that they may well be the victims of a carefully planned and well coordinated campaign of distortion. I suggest that they have been told that the enactment of this bill would place them and their fellow automobile dealers under Government regulation and control. I suggest to you that these small-business men whom we are trying to protect from coercion and intimidation have had confusion created in their minds because this bill, and another bill that is now pending before a subcommittee of the Senate, have been skillfully interwoven, with the end result that shocking and dire results have been predicted to these men if any bills concerning the automobile factory-dealer relationships are passed at this session of the Congress.

It has been indicated to me that the spokesman of an automobile manufacturer stated to a group of dealers of that manufacturer that "Our study of the proposed legislation has led us to the considered opinion that the legislation could have the effect of reducing volume and increasing prices. Indeed, we do not see how that result could be avoided on a short-term basis."

This statement, if I am correct, did not isolate S. 3879, nor any other bill, but was offered in justification of a position "against legislation." This is what I mean when I say that confusion was engendered in dealers' minds.

Thousands and thousands of automobile dealers cross the country would like to appear in support of this bill. In the interest of time, and out of consideration for this committee, we have asked them not to request permission to appear.

I would like to repeat to this committee what I have said many times in Detroit and Dearborn. We of NADA feel that it is nonsensical, and not in the public interest, for there to be any deep-rooted unrest in the automobile industry; for there to be any suspicion or doubt, or fear, between the manufacturers of automobiles and their dealers. We are seeking to help produce a working climate in which both elements of the industry can fulfill a position of public trust and confidence. It is a highly competitive industry and we would not want to see anything done that would reduce competition.

I said earlier that this bill was not hastily drafted. I would like to amplify that statement. We believe wholeheartedly in the council-table approach to solving problems within the industry.

For many years automobile dealers have been aware of the existence of difficulties stemming from the unilateral form of sales agreements between themselves and the manufacturers.

For many years they have tried with no success to bring into being a relationship that was bilateral in nature; that would spell out the obligations of both parties; that would embody good faith and permit either signatory to have his day in court.

In recent weeks, and to a great degree because of hearings conducted in the Senate and the House and the establishment within the Senate of the Subcommittee on Automobile Marketing Practices, there have been a great many welcome changes in the overall factory-dealer picture.

All of these changes have contributed toward the establishment of what we currently refer to as an era of good feeling. We like this, because we believe that there should be good feeling between manufacturer and dealer.

Several of the manufacturers have said that their revised sales agreements with their dealers, or the sales agreements upon which they are now working preparatory to submitting them to their dealers, do in fact contain provisions that will permit a dealer to have his day in court. In other words, the dealer will no longer sign away this right in order to obtain the privilege of selling automobiles.

The men whom I represent have reminded me that what men can do men can undo, and that they would feel much happier in their minds if they could be certain that these basic rights are guaranteed them by statute, so that they and their successors would not have to live under the uncertainty that a change in management in Detroit might bring about a change in attitude.

Let me further identify the retail automobile dealer for you. He is the man who, with his fellow dealers, donated last year more than 7,500 new automobiles to the high schools of America for teen-age driver training. That is a notable public service in itself, as every mother and father is well aware.

He is the man whose contribution to safety, comfort, and convenience only begins when you drive out from his dealership in your new car because he provides continuing service during the life of the car.

He is the only man whose national trade association recently completed a film in cooperation with the Federal Civil Defense Administration that is designed to emphasize the role of the family car in the event of disaster.

He is the man who, in every community, is a public-spirited, civic-minded citizen, a leader in the annual drives for the Community Chest, the Red Cross, and charitable organizations.

He is the man who this year, together with his fellow dealers will spend over \$200 million in local advertising in addition to the \$217 million that he will contribute as his portion to the so-called cooperative advertising fund of the various manufacturers.

He belongs to a retail industry whose payroll exceeds 12 percent of the entire retail payroll in 42 of the 48 States.

He is also the man who, in a tabulation made last year by a national magazine, stood 39th in profits among 41 professions in which small-business men engage.

Finally, gentlemen, he and his fellow dealers have not come to the Congress seeking subsidy, a protective profit wall, a guaranteed annual income, nor any form of price fixing.

His retail industry represents hard-hitting, dynamic, competitive enterprise in every sense of the word.

Furthermore, gentlemen, the retailers of this industry recognize that they have an obligation which extends beyond the operating conditions of today; an obligation that all of us in middle life have to those who will follow. Some months ago, the National Automobile Dealers Association took positive action toward accepting this responsibility by establishing within the framework of NADA an organization known as the young executives group. Membership is open to men in management positions, within the ranks of our members, who are between the ages of 21 and 40.

We have already discovered that these young men, the majority of whom have served their country in combat, are asking very serious and very intelligent questions and are quick to voice their apprehension of many of the conditions which they see being faced daily by the franchised dealers. These young men want more than words. They demand proof—not that theirs is to be an assured security for life, but proof that you and I and our generation are sincere when we speak of "opportunity" in the economic future of America.

The retail automobile dealers recognize, of course, that laws cannot be passed which will change the hearts of men or amend their character, but they recognize, too, that there are laws on the statute books today that were designed to curb or to cure inequities as between groups.

Welcoming competition, eager to take their chances with success or failure, devoted wholeheartedly to the rough and tumble of a fast-moving profession, they ask only for equality of opportunity. It would seem to me that such a desire and demand is in every way compatible with "free competitive enterprise" or "dynamic capitalism" or any other expression that is descriptive of the tenets of our beliefs.

Mr. Chairman and gentlemen, I thank you again for the privilege of being permitted to appear before you. The men whom I represent ask nothing but the right to the same form of independence that is enjoyed by the small-business men in other industries. They think they are deserving of this—and so do I.

I therefore most strongly urge the prompt reporting out, and enactment of this "good faith", day in court bill.

STATEMENT OF CHARLES M. HEWITT, JR., ASSISTANT PROFESSOR OF BUSINESS LAW,
INDIANA UNIVERSITY

Mr. Chairman, my name is Charles M. Hewitt, Jr. I am presently employed by the School of Business, Indiana University, Bloomington, Ind., as an assistant professor of business law.

For over a year I have from time to time served as a special consultant for the National Automobile Dealers Association and for the Automobile Dealers Association of Indiana on problems relating to franchise agreements under which the franchised retail automobile dealer conducts his daily business operations.

In 1955 I gave testimony before two congressional committees concerning automobile dealer franchise issues. I have also presented similar testimony before a special interim commission of the Indiana Legislature.

My interest in the legal and economic aspects of automobile franchise agreements extends back to early 1953 when I commenced a special study of this subject. My book entitled "Automobile Franchise Agreements" will be released this September by Richard D. Irwin, Inc., of Homewood, Ill.

Many of the legal and economic issues related to automobile franchise agreements are extremely complex and call for extended discussion. This statement was prepared, however, under the assumption that this committee could only allocate a limited time for each witness. For a more complete statement of the history and background factors relating to automobile franchise agreements, I respectfully refer this committee's attention to the summary statement and extended statement I presented to the O'Mahoney committee on November 30, 1955. I would like, however, to briefly outline some background points which I believe are relevant to a consideration of H. R. 11360 and S. 3879.

Under early automobile franchise agreements automobile dealers were expressly designated to be "exclusive agents" of their manufacturers. The courts implied obligations of fair performance on the part of manufacturers. Dealers who were unfairly or arbitrarily treated were able to win law suits.¹ After 1910, however, the manufacturers introduced franchise terms designed to retain for themselves the basic benefits of the agency relationship (namely the principal's right of control) without having any of the customary liabilities that a principal owes his agent (for example the duty to reimburse and indemnify). The manufacturers accomplished this purpose by inserting franchise terms which (a) denied that the dealer was an agent; (b) disclaimed all legal liability to the dealer; and (c) gave the manufacturer the right to cancel the dealer's franchise on short notice without cause.

Once the average dealer has invested as a condition of obtaining the franchise of any manufacturer he must do the bidding of his manufacturer or run the risk of losing a substantial part of his investment. This is particularly true in modern times where only 3 manufacturers account for 95 percent of total production. The canceled dealer has small opportunity for the franchise of another manufacturer—most of the remaining manufacturers are usually already represented in his area.

For these reasons the manufacturers have never had to worry about obtaining fixed legal commitments from their dealers. In fact, the franchises (at least up to 1956) were deliberately drawn with no substantial obligations on either party—so that indefiniteness of obligation and lack of mutuality could be used as a defense against any dealer's suit for breach of franchise—or to any dealer's suit for damages due to arbitrary cancellation.

The individual dealer is expendable and replaceable from his manufacturer's standpoint. From the dealer's standpoint, however, the continuation of his franchise is essential for the protection of his investment and for the life of his business. Since the franchises themselves have afforded little if any legal protection to the dealer, it is obvious that he imposes trust and confidence in his manufacturer. It is also obvious that dealers must within broad limits accept any franchise terms the manufacturers might choose to insert.

Although after 1910 a majority of the courts began to rule that the franchise created a vendor-vendee (arm's length or adversary relationship) between manufacturers and their franchised dealers, many important courts and legal authorities have recognized that much more is involved. Officials of various manufacturers have also stated that the relationship is "unique" and involves a high degree of trust and confidence.

There is convincing evidence on record that certain manufacturers have at times arbitrarily abused individual dealers by virtue of the powerful legal and economic position they have created for themselves. There is also evidence on record which shows that certain manufacturers have used their franchise power over dealers as a means of accomplishing violations and possible violations of the antitrust laws. The basic legislative problem therefore involves ascertaining some way of putting reasonable checks on the power that the manufacturers are in a position to exercise over their dealers.

¹ See *Randall v. Peerless Motor Car Co.*, 189 Mass. 395, 75 N. E. 695 (1905); *Isbell v. Anderson Carriage Co.*, 170 Mich. 304, 136 N. W. 457 (1912); *Dildine v. Ford Motor Co.*, 159 Maine App. 410, 140 S. W. 627 (1911).

ALTERNATIVE APPROACHES TO THE PROBLEM

Splitting up the manufacturers.—Some economists have advocated vigorous antitrust action to separate the various divisions of dominant manufacturers similar to the antitrust proceeding against Standard Oil in 1911. The benefits to dealers and to the public of this solution, however, are debatable to say the least.

A Wagner Act for dealers.—At least some economists might advocate legislation permitting dealers to combine to bargain collectively with their manufacturers. The ultimate economic effect of such legislation as a solution to automobile franchise problems, however, would appear to be highly indeterminate.

Legislating the franchise terms.—The proposed Motor Vehicle Act of 1940 attempted to legislate the terms under which dealers and manufacturers could do business. The FTC was vested with supervisory powers over franchise terms.

This approach introduces elements of inflexibility into an industry where the economics of the industry mitigate against inflexible relationships. In addition, it would seem that continuous supervision by the FTC should be avoided if possible.

Miscellaneous approaches.—Several bills were introduced in the past few months which involve other approaches to the franchise problem. Some of these bills stress forcing the manufacturers to spell out in the franchise specific causes for cancellation. This approach could quite easily backfire. Since the manufacturers control franchise terms they could quite easily provide that dealers selling below national average would be subject to cancellation. I doubt dealers as a whole would be better off. The manufacturers could then blame Government intervention for all dealer troubles.

Another bill would attempt to protect dealers by law as "independent businessmen." Outside of the vagueness of this concept from a legal standpoint it is debatable that such a policy is desirable from either the standpoint of dealers or the public. Some of the controls exercised by manufacturers work to the benefit of their dealers. The manufacturers are strategically located and have the trained personnel for extending many aids to dealers. In addition, some controls by manufacturers have tended to check practices by some dealers contrary to the public interest.

Another bill would make it a crime for a manufacturer to cancel a dealer where the "principle" reason of such cancellation is because the dealer refused to buy the manufacturer's goods. Taken literally this would seem to make it a crime for manufacturers to rid themselves of clearly incompetent or lazy dealers. It is doubtful this would work in the public interest.

The "Good Faith" approach, H. R. 11360 and S. 3879

Any legislative approach to the automobile dealer franchise problem should involve all or most of the following general principles:

(1) It should give some minimum protection to dealers from the exercise of arbitrary or discriminatory power by their manufacturers both during the duration of the franchise and on the termination of it.

(2) It should recognize the need for flexibility in the franchise relationship. The practicality of a legislated contract approach to the problem is doubtful.

(3) If possible, it should be grounded on legal precedent.

(4) It should preserve and protect in a fair manner the interests and equities of manufacturers, dealers, and the general public.

It is my opinion that S. 3879 substantially meets all of these tests.

(1) The provisions of S. 3879 impose mutual duties on both manufacturers and dealers to act in strict good faith (i. e. in a fair, equitable and nonarbitrary manner) both during the duration of the franchise and on the termination of same.

(2) S. 3879 represents a flexible approach to the problem. The courts can develop the concept of "good faith" on a case-to-case basis and narrow or expand its application with changing economic circumstances. The legal history of the due process clause in the Constitution and the sections of the Sherman Act afford excellent illustrations of the desirability of broad, flexible concepts when dynamic economic problems are involved.

(3) The good faith concept is well established in many areas of the common law where close economic relationships are involved. I might

mention partnerships, trusts, agencies, and certain family relationships in this connection.²

There is also substantial legal precedent for a good faith concept in some automobile franchise cases decided by authoritative courts.³ In the Busam case cited below the court ruled that an option to terminate at will could only be exercised in good faith. In the Nebel case the court ruled the dealer could collect damages for a cancellation without reasonably just cause and ruled the dealer had a right not to be unfairly treated or discriminated against.

There is also indirect legal support for this good faith concept in nonfranchise cases and in authoritative legal writings.⁴

"The very fact that so frequently this carefully drawn instrument (franchise) leaves the question of its termination an obligation incompletely expressed, and the startlingly disproportionate burden otherwise cast upon the dealer should here, as in requirement and outputs contracts, justify the courts in inferring an intention to bind both parties for at least such time as may be required to demonstrate the cause or to establish the grounds for honest dissatisfaction, or otherwise for a reasonable time just as where no provision is made. (Williston, Contracts, sec. 1027A, p. 2861.)

"Fiducial relationships recognized and enforceable in equity do not depend upon nomenclature, nor are they necessarily the product of any particular legal relationship (*Appleman v. Kansas-Nebraska Gas Co.*, 217 F. 2d 845 (10 Cir. 1955)).

"A fiduciary relationship exists in every case where in fact trust and confidence are reposed by one person in another, who as a result thereof, gains influence and superiority over the other (*Bremer v. Bremer*, 411 Ill. 454, 104 N. E. 2d 299 (1952))."

As I have already pointed out, although there is substantial precedent for reading good faith into the franchise relationship, under the majority rule, the parties are held to deal at arms length and good faith is not required. A few quotes from leading cases representing the majority rule will illustrate the need for legislation requiring good faith.

"With a power of termination at will here so unmistakably expressed, we certainly cannot assert that a limitation of good faith was anything the parties had in mind. Such a limitation can be read into the agreement only as an overriding requirement of public policy. This seems an extreme step for judges to take (*Bushwick-Decatur Motors v. Ford*, 116 F. 2d 675 (2d Cir. 1940)).

"Without indulging in observations as to fairness or unfairness of the agreements, it is clear either party had the right to terminate without liability. Unfair? Those who desire to philosophize on the subject may do so. But we are confronted with the problem of construing the agreement, not in criticizing its terms" (*Myers Motors, Inc. v. Kaiser-Frazer Sales Corporation*, 178 F. 2d 291 (8th Cir. 1949)).

"* * * such right to terminate was not subject to question on the ground of unreasonableness, unfairness, lack of good faith, bad faith or because of motive, intent or resultant detriment to the plaintiff [dealer] (*Martin v. Ford Motor Co.*, 93 F. Supp. 920 E. D. Mich. 1950)."

In summary, the good faith approach recognizes the facts of the relationship—the mutual interdependence of the parties—the trust and confidence reposed, rather than the fiction created by franchise terms which have resulted in a majority of the courts holding that the parties are adversaries dealing at arm's length.

An evaluation of certain objections raised against S. 3879

An analysis of the objections raised to S. 3879 poses three problems. First some of these objections were grounded or features amended out of the Senate version of the bill. Second, other objections contradict themselves as to their assumptions as to what the bill would do. Still other objections are based on

² See the excellent note 19, Corn L. Quar. 603 (1935).

³ See *Isbell v. Anderson Carriage Co.*, 170 Mich. 304, 136 N. W. 457 (1912); *Holton v. Monarch Motor Car Co.*, 202 Mich. 271, 168 N. W. 539 (1918); *Chevrolet Motor v. Gladding*, 42 F. 2d 440 (4th Cir. 1930); *Busam Motor Sales v. Ford*, 85 F. Supp. 790 (S. D. Ohio 1952); *Wood Motor Co., Inc. v. Nebel*, 232 S. W. 2d 777 (Tex. Cir. App. 1950).

⁴ See *J. R. Watkins v. Rich*, 284 Mich. 82, 235 N. W. 845 (1931); *Marrinan Medical Supply v. Fort Dodge Serum Co.*, 47 F. 2d 458 (8th Cir. 1931); *Jay Dreher Corp. v. Delco Appliance Corp.*, 93 F. 2d 275 (2d Cir. 1937); *Beebe v. Columbia Azile Co.*, 233 Mo. App. 212, 117 S. W. 2d 624 (1938).

⁵ See also *Cadillac LaSalle Co. v. Claude Nolan, Inc.*, 118 Fla. 250, 158 So. 878 (2d Cir. 1935); *Bremer Motor Car Co. v. Chrysler Corp.*, 108 F. Supp. 948, cert. den. 345 U. S. 942 (1952).

assumptions that are totally unrealistic both in fact and law. Let us analyze some of the objections.

(1) The bill represents class legislation for one particular industry.

(a) There are many examples of special legislation to meet the problems of one industry. The sugar industry, the oil industry, and agriculture might be cited in this connection.

(b) It is true that there are other industries with franchise relationships which may need similar legislation but the fact is that only the automobile industry has had several investigations and a factual record to support such legislation. As the United States Supreme Court stated:

"The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. *Tigner v. State of Texas* (310 U. S. 141, 60 S. Ct. 879, 84 L. Ed. 1124). Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *Semler v. Oregon State Board of Dental Examiners* (294 U. S. 608, 55 S. Ct. 570, 79 L. Ed. 1086). The legislature may select one phase of one field and apply a remedy there, neglecting the others. *A. F. of L. v. American Sash Co.* (335 U. S. 538, 69 S. Ct. 258, 93 L. Ed. 222), *Williamson v. Lee Optical Co. of Oklahoma* (348 U. S. 483, 75 S. Ct. 461, 465).

(2) The bill obliges the manufacturer to protect any dealer from coercion—regardless of source.

(a) This objection appears to overlook section 1 (e) of S. 3879 which limits the duty of good faith to each party to any franchise. As I read this a manufacturer would not be liable for an act of bad faith by a distributor because the manufacturer is not a party to the distributor-dealer agreement. If, of course, the distributor was acting as agent under the direction and control of the manufacturer, the manufacturer might be liable.

(b) This objection also overlooks the basic point that the courts will give a statute a constitutional construction where it is possible to do so. It would obviously be putting an unconstitutional construction on the act to hold the manufacturers liable for coercion from any source.

(c) Lastly, what jury would ever find bad faith on a manufacturer's part for the acts of others over which it had no knowledge or control?

(3) The clause "protect all the equities of the automobile dealer" might prevent the manufacturer from appointing additional dealer depriving newcomers of their fair chance to enter the automobile industry and seriously restrain the distribution of cars.

(a) The rather vague reasoning here indicates the courts may define "equities" in terms of what has been the policy of one manufacturer in regard to consulting old dealers before appointing new. I submit that the courts will be influenced by established law—such as a seller's right to deal with buyers of his own choosing rather than management-policy-privileges which have not been recognized in either law or equity.

(b) It seems ridiculous to reason that either a jury or a judge would permit a manufacturer to be held liable for breach of good faith where the manufacturer is acting to meet normal economic distribution needs. Would a jury grant damages to a dealer seeking a monopoly?

(4) The bill broadly read might impose a duty on a manufacturer to guarantee the dealers profits and his investment.

(a) This seems to be based on an unrealistic assumption as to the construction the courts will put on good faith. Even a trustee is not the guarantor of the profits or investment of the beneficiary. The agent's duty of good faith does not embody such an economic guarantee of his principal's welfare.

(5) The bill would build for dealers a sanctuary from the rigors of competition.

(a) It is said the manufacturers might be forced to gear their production more closely to demand so as to preserve for each dealer a profitable investment. Now if the manufacturers do not coerce dealers production is already geared to dealer orders. If manufacturers do coerce dealers then the bill will protect dealers from this coercion.

(b) At the dealer level of the industry are found the predominant characteristics for a highly competitive market. There are large numbers of competing firms in competition with each other and with used cars on the market. The bill does not change the basic features of this situation.

It seems strange that such great fear should be voiced as to monopolistic tendencies in a level of an industry noted for competitiveness when so little criticism is expressed for the monopolistic features at the manufacturing level of the industry. The manufacturers sell cars within an administered price structure, obtaining the full cash price in advance of delivery. Competition is basically nonprice competition. There has been no successful entrant since about 1925. Furthermore, there is an established record and history of antitrust and possible antitrust violations against certain manufacturers. The true locus of any sanctuary against competition seems clear.

(6) The bill would prevent the manufacturers from stopping bootlegging.

(a) Strangely enough, some opponents of the bill fear it because it leads to dealer monopoly—others because it will open the floodgates to competition which might destroy dealers. Could a manufacturer without breaching good faith reduce the supply of cars to a dealer who is systematically selling those cars out of his marketing territory? It is my opinion that the manufacturer can. I base this in part on clauses in the franchise such as “* * * Pontiac will make such products available in quantities to meet dealer's reasonable requirements in dealer's trade area * * *”; and “* * * dealer shall provide satisfactory sales performance * * * in the area described in paragraph first.” I also base this on several cases, but particularly on *Boro Hall Corp. v. General Motors*.⁶ In that case a dealer sued for treble damages under the Sherman Act, alleging the manufacturer had refused to permit him to establish a used-car outlet outside of his zone of influence. The circuit court of appeals, in dismissing the dealer's complaint, said:

“We think the effect of the proof is that General Motors Sales Corp. required no more than that the location of a used-car depot should be fixed by agreement at such a place as would not unduly prejudice other dealers who did business with the seller. We do not regard this as unreasonable interference with competition or unfair arrangement between the plaintiff [dealer] and General Motors Sales Corp. The latter had the right under its contract to discontinue dealings with the plaintiff on 30 days' notice. Under such circumstances, we can see no reason why it should not be allowed to fix a location for the sale of used cars at a place that would not unduly affect other dealers.”

(b) It should also be noted that the manufacturers have only quite recently indicated that they were taking steps to stop bootlegging. On prior occasions they indicated there was little they could do under penalty of the present antitrust laws.

(7) The bill would give the industry a litigious outlook.

(a) Most dealers and manufacturers are in business on a permanent basis. It has not been actual arbitrary cancellations but the threat thereof that has forced dealers to at times submit to unfair and unreasonable actions by their manufacturers. It would not be actual dealer lawsuits but the possibility thereof that would tend to check arbitrary and unfair future acts by manufacturers.

(b) Litigation would take on the aspects of fair hearings by unbiased tribunals. Manufacturers would tend to be more careful in the selection of dealers and in the selection and instruction of the thousands of factory representatives and underlings that have heretofore had so much say over the economic future of dealers.

(8) The bill is no longer needed because of recent franchise reforms.

(a) After 1920 General Motors dealers had a franchise of indefinite duration. In the 1940's a 1-year franchise was substituted. In the 1920's General Motors franchises had terms giving used car scrapping benefits to their dealers. These provisions were dropped in the 1930's. These are examples which show that franchises' terms have varied in the past. Dealer gains are not always retained. This bill would tend to put a minimum floor under the franchise terms.

(b) Some objections to the bill are based on vagueness. The choice is not clarity versus vagueness but vagueness administered by the courts versus vagueness administered by the manufacturers. The new General Motors 5-year franchise can be canceled for cause for any dealer violation of 8 separate sections. The causes include failure to maintain a satisfactory place of business, capital as specified by the manufacturer or subsequently negotiated with the dealer, a fair share of sales, adequate sales staffs and sufficient mechanical staffs. The franchise does not stipulate the number or types of cars the dealer will order

⁶124 F. 2d 822 (1942). The other cases are *Ford Motor Co. v. Benjamin Boone, Inc.* 244 Fed. 335 (9th Cir. 1917); and *Peck Manufacturing Co. v. General Motors Corporation* 80 F. 2d 641 (7th Cir. 1935).

or the manufacturer will furnish. Indefiniteness of obligation has been a major defense used in past franchise cases. It will be many years before it can be said with certainty that the new franchise pattern creates issues of law and facts so that dealers will have a chance of having a court hear their cases on the merits.

In conclusion I would like to express my deep appreciation to this distinguished committee for allowing me to express my views. I do not feel that S. 3879 is a perfect bill by any means nor that it will solve all industry problems. I do think it is a good bill that strives in good faith to take a step in the right direction.

STATEMENT OF FREDERICK M. SUTTER, FIRST VICE PRESIDENT, NATIONAL
AUTOMOBILE DEALERS ASSOCIATION

Mr. Chairman; my name is Frederick M. Sutter. I am the Dodge-Plymouth dealer in Columbus, Ind. I have been a Dodge dealer continuously since June 1922, at which time I moved from my home in Detroit to enter business in Columbus. The 2 previous years I spent in the sales department of Dodge Bros. in Detroit, where I had gone after completing my course in business administration at the University of Michigan (which had been interrupted by service in the Navy in World War I). My entire adult life has been spent in this business, and the welfare of the industry is close to my heart.

The conditions which S. 3879 seeks to correct have existed for many, many years.

Your committee has been told, or will be told, I am certain that no legislation is needed, and that the industry should be given a chance to work out its own problems. It has been given such a chance for a long time, and I believe your committee might be interested in a brief résumé. I feel qualified to report first hand on this because I have served on the NADA Industry Relations Committee since its establishment in 1948 and in 1953-55 served as its chairman.

This committee was given the responsibility of handling factory-dealer problems, and was instructed to find a solution. It proved to be a large assignment. However, long before this, the industry had a chance to put its house in order and failed to do so.

In 1939 the Federal Trade Commission completed a one-thousand-odd-page report on marketing practices in the automobile industry. It made critical comments on the one-sided nature of the selling agreements, the coercive pressure exercised by the manufacturers, and other inequitable practices, and recommended their abatement. The National Automobile Dealers Association believed that legislative correction was needed, and Hon. Wright Patman, of Texas, drew up and prepared to introduce a bill designed to correct these conditions. But then as now there were conferences between manufacturers and dealers, and it was suggested that we try to "work it out in the good, traditional private enterprise way—inside the family." (The quotes are from Mr. Gossett's remarks to the Ford emergency meeting June 20, 1956.) The suggestion worked in the sense that the dealers decided not to support legislation. But once the time for legislation had passed, the manufacturers seemed to lose interest, and no fundamental changes in the factory-dealer relationship were forthcoming. NADA realized too late that the real purpose of the manufacturers was to avoid any legislation which would hinder their unrestricted power over their dealers.

The conditions criticized by the Federal Trade Commission 17 years ago are still with us in even more acute form—indeed, parts of the Federal Trade Commission report read as though written in 1955. The coming of World War II turned our attention to other matters, and it was not until 1947 that NADA again began a serious effort to effect a correction of conditions we considered inequitable and unreasonable.

It again became evident that the heart of the problem lay in the nature of the selling agreement, often referred to as the franchise or contract. Various officers of NADA visited with executives of the motor manufacturers to suggest changes in the selling agreement. They usually received a cordial reception, but were invariably told that the matter of selling agreement revisions was not subject to discussion. They were also told that no manufacturer was willing to discuss his business relationships with his own dealers with men representing all dealers, some directly competitive. This seemed like a reasonable statement, and NADA took action to meet it. In 1953 we formed what we term "make advisory committees." There is a make advisory committee for each make of car. The dealers in each State handling the same make of car selected one of their

number to represent them; each committee was thus composed of one man from each State handling the same make. We thus had democratically selected committees representing the dealers in each make: 1 committee for Ford dealers, 1 for Chevrolet, 1 for Dodge, and so on for every make.

It would thus be possible, we thought, for these committees to transmit to their own manufacturers the thinking and wishes of all dealers handling that make. Or a small subcommittee could be selected by their fellow members to visit their manufacturer and discuss face to face the basic problems confronting them. Each of the committees meets annually at the time of the NADA national convention. At the first such meeting 2½ years ago, each committee listed corrections its members considered urgent. One interesting sidelight was that every committee listed nearly identical correctives. There were several, such as eliminate coercion, stop treats and intimidations, etc., but the one bearing most directly on the bill under consideration was this, and it appeared on every list: "Change the present one-way selling agreement and develop one which spells out the rights and duties of both parties." Several of the committees included detailed suggestions for changes.

The industry relations committee then transmitted this information to the respective manufacturers. We also attempted to arrange conferences between small subcommittees for each committee and their manufacturer. Attempts were also made by some of the committee chairman themselves. Only one such conference was ever held (Buick) and results were less than satisfactory. All other requests were ignored or refused.

The industry relations committee also suggested that Adm. Frederick J. Bell, our executive vice president, schedule conferences with top factory management and cover this subject. He did have numerous conferences and discussed many details of dealer operation, but on the basic questions of developing an equitable selling agreement, there was silence. The executives of one manufacturer did express interest in the recommendations and indicated they would like to study them. That was 2 years ago. Possibly they are still studying them; at any rate there has been no action and no further word from them.

It has been made undisputably clear to us that the automobile manufacturers had and have no intentions of giving up the advantage they have enjoyed through the selling agreement. They have made it clear that they consider the terms of the selling agreement their prerogative and theirs alone; and refuse to discuss changes even when requested by elected representatives of their entire dealer body.

With such a background, anyone who now states that legislation is not needed and that we should give the manufacturers a chance to work this out, is utterly ignorant of the endless failures of attempted conferences to work out these basic problems "in the good traditional private enterprise way, inside the family." Either that or he has an obviously ulterior motive, or has been "brainwashed" [I will discuss this latter in a moment.]

I have been probably closed to this subject than any other dealer in America, and I will say to your committee that in my opinion, it is not only necessary but imperative that this bill be enacted into law. I will indulge in just one prophecy. (I note that most of the statements by opponents of any bill seem to be merely wildly imaginative prophecies about what might happen if any bill is passed, and please note that to date there has not been one constructive suggestion from the manufacturers or their allies—merely opposition to any and all legislation. Because what the manufacturers want is a breathing spell till this blows over, then they can get back to coercion as usual.) I will predict that if this bill is not enacted into law you will soon see coercion in some areas, and conditions generally, worse than you have ever seen them in this industry.

That is our view on the need for the bill. Now a word about the bill itself. For the past 3 years NADA has participated in a study of the whole history of selling agreements in the automotive industry. It is the most comprehensive study ever made, and has recently been published in book form. From this study, one fact became increasingly clear. That is this: Through the device of the selling agreement, the manufacturers have succeeded in controlling their dealers while avoiding the legal responsibility which normally accompanies such control. They have literally formed their own area of government—safe from review by the United States courts. They have made their own rules, they have administered them, and they also serve as judge and jury if there was a dispute. And if an aggrieved dealer did seek redress in Federal court, he was nearly always thrown out of court on motion of the manufacturer.

Mr. Curtice has stated that a dealer can take the new General Motors selling agreement to court. He is correct. A dealer can. He could also take the former one to court.

It became clear that the answer did not lie in changing the provisions of the sales agreement (which obviously could be changed again at the will of the manufacturer), but rather in requiring good faith, and also in breaking through the "iron curtain" the manufacturers had set up, and guaranteeing to a dealer the right to have his case heard on its merits in a United States court. This the bill does in the clearest, simplest language possible. We consider the bill sound because it does not inject Government into business, but says in effect there shall be no business dictatorships in America that cannot have their acts reviewed by the courts.

No one but a dictator can quarrel with that.

It is difficult to comprehend how anyone can with honesty talk against good faith. Perhaps that is why the Ford Motor Co. called in a large group of their dealers to an "emergency meeting" on June 20, at which William T. Gossett, vice president and general counsel of Ford Motor Co., and Ernest R. Breech, chairman of the board of Ford Motor Co., both built up a frightening picture of the dealers' future if either this bill or S. 3946, the Monroney bill, were passed.

I think the gentlemen of this committee would be interested in their remarks, especially those of Mr. Breech. They are available. His remarks, as reported in the printed pamphlet rushed to all Ford and Lincoln-Mercury dealers (I say "rushed," because while this meeting was held Wednesday, the printed brochure was in the hands of dealers in the Midwest on Saturday morning) his remarks, if you read carefully, are all directed toward provisions of the Monroney bill, but he does not say so and it is easy to assume he is referring to both bills or in fact any legislation.

He painted such an ominous picture of what would probably happen to their dealers in the event of legislation that he felt impelled to make toward the close of his remarks this very significant comment: "I hope that you will not interpret anything I have said as a threat."

Gentlemen of the committee, that is a June 20, 1956, example of how one manufacturer practices coercion and intimidation which is not a "threat."

Could a more compelling argument be given for the need of this good-faith legislation?

Actually, executives of all manufacturers have at one time or another expressed the need of good faith in factory-dealer relationships, sometimes using terms like "mutual trust" or "sincerity of purpose," but in one way or another saying the same thing.

Let me give you a brief quotation from Ford executives' remarks. I select these for two reasons: (1) they have been made in the past 60 days, and (2) they do not harmonize well with what I term the "brainwashing" given to the men summoned to the June 20 meeting.

During April and May of this year Ford Motor Co. sponsored a series of dealer meetings across the country. A brochure containing a complete record of what was said at these meetings with a foreword by Henry Ford II was recently sent to their dealers. Among other things covered were factory-dealer relationships.

Lewis D. Crusoe, executive vice president, car and truck divisions, said (pp. 12 and 13):

"If we accept as a fact the interdependence of company and dealers, we must recognize that this interdependence is predicated on the presence of certain conditions. We can succeed and seek progress only in an atmosphere of complete confidence, full cooperation, and reciprocal loyalty.

"Underlying these three fundamental requirements must be the sense of fair play that is so vitally a part of the American tradition. When fair play characterizes the relationship of company and dealers, and, for that matter, the relationship of our dealers and other Ford Motor Co. dealers, there is no ground in which deep-seated difficulties can take root."

We agree completely with those sentiments. Similar ones have been expressed at various times by General Motors, Chrysler, and the independents.

Two paragraphs further on, Mr. Crusoe continues:

"There must, indeed, be something more to these dealer-company relationships than the words of the sales agreements binding the two parties together.

"The 'something more,' as I see it, is the abiding sense of trust and confidence that overrides all other considerations. From this fact of our faith in one another, I draw tremendous encouragement * * *

Could anyone in this room describe the need and value of good faith in clearer terms?

Mr. Ford said (p. 19) : "It has been stated many times and in many ways that no contract is any more effective than the good intentions of the parties involved."

There seems to be general agreement on the necessity of good faith. Then how can there be opposition to this bill which makes a legal requirement of the good faith so highly regarded by the manufacturers?

The only possible explanation would seem to be a line of reasoning somewhat like this: "We the manufacturers, know that our dealers place trust and confidence in us, or they would not invest their money in a dealership. We also believe in the need of mutual trust and confidence, but we cannot permit this to become a legal requirement, for a time may come when it will be to our advantage to act in bad faith toward one or more of our dealers and we must not have any legal restraint on our freedom of action."

Is this a reasonable statement of the manufacturers' attitude? The testimony before the O Mahoney and Monroney committees indicated that it is. In those hearings, testimony under oath brought out a picture of unreasonable dealer cancellations, dealers forced out of business by coercive pressures, vicious and disruptive sales practices pursued at the insistence of factory representatives. Good faith was not in evidence, and the dealer, denied by the terms of the sales agreement his right to a day in court, had no recourse but an appeal to other executives of his factory, which did not bring relief.

While publicly stating the necessity of mutual trust and confidence, of good faith, these executives—according to testimony under oath—have committed or condoned actions which violate every concept of the good-faith doctrine which they preach.

The hearings brought to light conditions of economic serfdom repugnant to the American sense of fair play. The resulting bad publicity had much to do with manufacturers' announced franchise changes and other improvements.

Assuming that changes made in one manufacturer's selling agreement does give that manufacturer's dealer his day in court. The same or similar changes have not been made by all manufacturers. Hence, a great number of dealers are still in the same position they were in prior to these improvements in the selling agreement. But even as to the selling agreements which have been revised, I have been told that there is still some doubt that the new selling agreement does accord to dealers their day in court and guarantees the exercise of good faith on the part of the parties to the agreement.

We have reached the point in our industry where there should be no doubt regarding the exercise of good faith; thus, we urge the enactment of S. 3879, which legally assures the exercise of good faith. Careful legal studies have indicated this bill's fairness and wisdom.

We respectfully urge a favorable report by your committee at the earliest possible day.

The CHAIRMAN. I would suggest that you and the staff get together after these hearings, and you can probably work out a few of these quirks that have developed. It might be very helpful.

And I think it is very creditable of you, realizing the exigencies under which we are now operating, particularly at the time, to submit your statements for the record, rather than reading them.

I take it that refers to Mr. Sutter as well as to Mr. Hewitt.

Mr. BELL. It does, sir.

The CHAIRMAN. All right, we will accept those statements.

You stand by, you can listen, and you will be able to respond by way of rebuttal any way you wish.

Mr. BELL. Thank you very much, Mr. Chairman.

The CHAIRMAN. Counsel would like to ask 1 or 2 questions about the details of the bill, but I will ask you to be as brief as possible.

Mr. MALETZ. This concerns a few of the factual situations which may come up. First, suppose you have an existing dealer in an area who has been the only dealer in the area for 10 years. The manufacturer decides that he wants another franchised dealer in that area.

The first question is this: Would the existing dealer, under this bill, be authorized to sue the manufacturer on the basis of bad faith?

Mr. BELL. I would like to have these gentlemen give their answers. My answer is "no."

The CHAIRMAN. Is that the answer of all of you?

Mr. HEWITT. If you mean, would he be able under this bill to sue, he could sue, but whether he would win or not——

Mr. MALETZ. Would it be bad faith under those circumstances?

Mr. HEWITT. No; not as you stated it.

The CHAIRMAN. So that the old dealer couldn't keep out the competition?

Mr. BELL. No, sir; we don't seek to do that.

Mr. MALETZ. Secondly, suppose that this new dealer did not have an investment in the plant anywhere near as large as the investment of the existing dealer. Would that constitute bad faith by the manufacturer?

Mr. BELL. If I may answer that in advance of counsel, you may be addressing yourself to what is known in the industry as a stimulator dealer. And if a stimulator dealer, operating from a gravel lot, who is not required to have anywhere near the capital investment or the service facilities of the existing dealer, my lay opinion is that there is an element of bad faith there.

I would like to have the lawyers answer that.

Mr. MALETZ. Professor Hewitt.

Mr. HEWITT. I will say that that coupled with the other background facts, a long relationship, and perhaps a request that the dealer maintain his investment at a higher level, might make it a jury question, which could be found to be bad faith.

Mr. MALETZ. If the new dealer is not required by the manufacturer to make an investment in his plant anywhere near as large as the investment of the existing dealer, would that fact in and of itself constitute bad faith by the manufacturer?

Mr. HEWITT. I think it would be evidence of it. I think it would be very substantial evidence of bad faith. But I don't think it would by any means be conclusive.

The CHAIRMAN. I think that is a good answer.

Mr. MALETZ. What effect would the passage of this bill have upon various State statutes requiring licensing of both car dealers and manufacturers?

Mr. BELL. That is a legal question which I cannot answer.

Mr. MALETZ. Dr. Kirks, would you like to try that?

Mr. KIRKS. I don't know whether that is the \$16 or \$32 question.

Mr. MALETZ. Where the State licensing statute, as in Colorado, requires a court order in any case before a cancellation or a nonrenewal of the franchise of a dealer becomes effective, what effect would passage of this legislation have on that kind of a State statute?

Mr. KIRKS. I might say that the court there found it necessary to designate a three-judge court to sit to test the constitutionality of that statute. And it is now being litigated at the present time. So I think it would be presumptuous——

The CHAIRMAN. Unless it is tested, it is the law on the books?

Mr. KIRKS. It certainly is.

The CHAIRMAN. What would be your opinion as to the effect of this bill on that statute?

Mr. KIRKS. I can't see the conflict between this proposed legislation—and there are 17 States, I think, now that have State statutes similar to, but not identical with, the Colorado statute——

The CHAIRMAN. Would you put in the record the States which have those statutes?

Mr. KIRKS. Yes, I would be happy to. We will also furnish you with a copy of those statutes.

(Subsequently Mr. Kirks submitted the following information:)

LIST OF STATES HAVING IN EFFECT "TRUE" MANUFACTURER-DEALER LICENSING LAWS	
Arkansas -----	Act No. 182, Session Laws of 1955, effective June 9, 1955.
Colorado -----	H-353, Session Laws of 1955, effective April 15, 1955.
Florida -----	Sections 320.60-320.70, Ch. 20236, Florida Statute, 1941, as amended.
Louisiana -----	Act No. 350, 1954 (R. S. 32:1251-1258), effective July 28, 1954.
Minnesota -----	Chapter 626, Session Laws of 1955, effective April 21, 1955.
Mississippi -----	H-945, Session Laws of 1954, effective May 5, 1954.
Nebraska -----	Sections 60-601-60-619, Revised Statutes 1943, as amended.
North Carolina -----	S-427, Session Laws of 1955, effective July 1, 1955.
New York -----	Article II-A, Secs. 195-198, of General Business Law, Acts 2558, 4548, 1956.
Oklahoma -----	47 Okla. St. Ann., Sections 561 to 568.
Rhode Island -----	Articles VII and VIII, Motor Vehicle Code Act as Amended, 1955.
South Dakota -----	S. B. 250, 1951.
Tennessee -----	S-123, Chapter 79, Session Laws of 1955, effective March 1, 1955.
Virginia -----	Chapter 7, Article 1, Sections 46-502-46, 540, 46-509 Virginia Code 1950, as amended.
Wisconsin -----	Sections 218.01 (1)-218.01 (9), Wisconsin Statutes, as amended.

The CHAIRMAN. Would you say that the Federal statute supersedes the State statutes?

Mr. KIRKS. Well, of course I would be confronted with the present situation, if the Federal Congress is legislating within the sphere in which it may operate, and there is a State statute that is in conflict, of course it would be superseded.

But most of these State statutes that exist at the present time are designed for other purpose, or pursue those objectives along other avenues than this good-faith doctrine. And so I don't envisage any conflict between this statute and the present existing statute.

Mr. MALETZ. Let me ask you this, if I may.

Would the establishment of a stimulator dealer by a manufacturer ipso facto be regarded as bad faith under this bill?

Mr. KIRKS. I would say "yes", because the purpose of a stimulator dealer is designed to discipline the preexisting dealer, discipline him through economic hardship by putting in a dealer which has no overhead, which is afforded a large volume of merchandise to sell, and because of his low overhead he is able to sell it at less expense, and quite frequently accompanied by no service facilities, so that this stimulator dealer is incapable of rendering the warranty service which the previously established dealer is required to render.

So, if you use the term "stimulator dealer" as we consider it—that is, a disciplinary device that is employed to chastise in bad faith an

existent franchised dealer—and if you have all those elements integrated into the picture, then it would be evidence of bad faith.

Mr. MALETZ. All that happens is that the manufacturer sets up a stimulator dealer for a particular area—would that in and of itself constitute bad faith by the manufacturer in the event one of the other dealers in that area decided to bring suit?

Mr. BELL. May I reply to that for a moment?

Mr. MALETZ. Yes, sir.

Mr. BELL. I think it all hinges upon a rather precise definition of “stimulator dealer.” If you simply say, if you put in two other nearby dealers, does that indicate bad faith, obviously it does not indicate bad faith. But the purpose for the establishment of this dealer, and the operating conditions under which he is permitted to operate in close vicinity—how close is “close?”—in this close vicinity to an existing dealer with a large required investment—I think it is a difficult question to answer, as you put it.

Mr. MALETZ. You see, my difficulty with the answer of Dr. Kirks is this. Section 3 of H. R. 11360 provides that the dealer can bring suit against the manufacturer for his failure to act in good faith in performing or complying with any of the terms of the provisions of the franchise.

Now, how would this stimulator situation be covered by any of the terms or provisions of the franchise?

Mr. BELL. May I just say to that, in partial answer, in recent testimony I recall very vividly Mr. Curtice commenting on this broad subject of stimulator dealer, and it is my impression that the idea of a stimulator dealer, as we define him, has been repugnant to General Motors at this time. Of course, they are here and can speak for themselves. But the indications are to me that they are opposed to that type of an operation, and do not intend to pursue it.

Mr. MALETZ. My question, I know, is a legal one. I don't quite understand how in the stimulator dealer situation, the existing dealer can bring suit against the manufacturer for alleged bad faith in view of the provisions of the bill, which allow the dealer to bring suit against the manufacturer for bad faith in performing or complying with any of the terms of the provisions of the franchise.

My question is this: How, under this language, can the existing dealer bring suit against the manufacturer for failing to act in good faith in complying with the terms of the franchise?

Mr. KIRKS. It is inherent in a franchise when it is granted by the manufacturer to a dealer, that based upon the number of car dealerships that is anticipated, that that dealer is to expect the business opportunity in order to meet that standard of sales performance.

If you had an established dealership—let's say that he has a \$1,000 capital investment—and I am taking that figure completely arbitrarily—a \$1,000 capital investment, and his sales potential and the sales quota which he is meeting is a hundred cars a month, there is nothing in this bill to prevent the manufacturer from establishing a dealer across the street from the present existing dealer.

Let us assume he has a \$50,000 capital investment, half of the former, and that his sales potential is 50 cars per month. As long as that relation was created there would be no basis for any recovery by the former dealer. But if the factory took the second dealership, and in relating the number of motor vehicles made available to it, rather

than relating it to the capital investment, which embodies sales and service responsibility under the warranty, and the future use of the equipment, was feeding that dealership 200 cars a month, designed solely to wreck the preexisting dealership, to bankrupt it, or to discipline him over a period of time, that, I think, impinges upon the implicit understanding of the establishment of the initial franchise.

Mr. MALETZ. Would you construe, the words "terms or provisions of the franchise" to mean the implied as well as express terms and provisions of the franchise?

Mr. KIRKS. I think very definitely that the normally deducible inferences from the language employed in the franchise is an ingredient of the franchise.

Now, the distinction, Mr. Chairman, between fair competition and unfair competition may not be black or white, it may be in the gray zone. What we are concerned with are the coercive and intimidating practices of the manufacturers.

The CHAIRMAN. I know that it is quite obvious——

Mr. KIRKS. And this is one of the devices which they employ to coerce and intimidate.

The CHAIRMAN. I want to ask you this question. I asked it of Senator O'Mahoney and he said he did not see it had much import. I said, is there not a danger in passing legislation of this sort that the manufacturers would set up their own outlets and do away with the so-called dealer arrangements that they have now?

Mr. BELL. I do not think there is the slightest danger.

The CHAIRMAN. Why?

Mr. BELL. It has been tried in the past.

The CHAIRMAN. What is that?

Mr. BELL. It has been tried in the past, and, as Dr. Hewitt outlines in his testimony—and he is perfectly able now to elaborate on it.

The CHAIRMAN. Just briefly.

Mr. BELL. It has not worked. And Dr. Richberg in the report he made for the NADA some years ago was that they did not want to enter into that because of the difficulties of acting as retailers as well as manufacturers—it is not a practical thing.

The CHAIRMAN. Is it due to a disinclination to enter into this because of the capital required to maintain all of these retail facilities?

Mr. BELL. Of course.

The CHAIRMAN. Is that the real reason?

Mr. BELL. That is the reason advanced by Mr. Richberg.

The CHAIRMAN. Would that reason obtain today?

Mr. HEWITT. Sir, from the information that I have been able to gather on that, most manufacturers started at an early date by having direct retail branches, but they found that using this dealership device has so many advantages over the direct retail outlets that all of the major manufacturers by, oh, 1918 or thereabouts, had converted over to the franchised dealer.

One of the main advantages is that if you put a factory employee into the retail outlets, the incentive, the motivation, is not there.

I think that Mr. Paul Hoffman wrote an article in 1930 for the consumer marketing series in which he pointed out that the direct dealer, the idea of having a franchised dealer as a businessman there to absorb the fluctuations of the market and to pay full cash in ad-

vance for the cars was so much superior to trying to sell through a factory employee who only has a job at stake—that it is so much superior that the manufacturers would not switch.

The CHAIRMAN. Now, it may be that the present method of distribution is a better one for them, rather than having direct distribution outlets.

Let us assume that the manufacturers would come to the conclusion that rather than be bound by this bill, they would prefer to ditch the whole system and go back to direct merchandising.

Mr. BELL. Let me say this in response to that question—

The CHAIRMAN. I do not say that they will, but you realize that they—

Mr. BELL. Well, my response is that if the five automobile manufacturers who are left or any one of them are willing to change the entire system of distribution of automobiles, in order to avoid having to act in good faith—I will rest my case on the Congress.

The CHAIRMAN. Will you read that answer back?

Mr. BELL. I simply said words to this effect, that if any one or more of the five automobile manufacturers who are remaining in business today choose as an alternative to acting in good faith some great change in the system of distributing automobiles, I am perfectly willing to rest our case right here in the Congress. I think, as a trial balloon, that is perfectly absurd.

The CHAIRMAN. Well, let us presume that the bill is passed and that a dealer of General Motors, say, cuts the price and when the time comes for renewal, General Motors says: "You have cut the prices and, therefore, you are not acting in good faith."

Would that be a legitimate claim by General Motors?

Mr. BELL. General Motors cannot control the prices at which a dealer is going to sell his product.

The CHAIRMAN. Well, would the fact that he cut the price, sells under the market, make him guilty of bad faith to such a degree that the franchise could be nullified?

Mr. BELL. Well, I don't think that he would be around very long to operate as a dealer.

The CHAIRMAN. Why wouldn't he be?

Mr. BELL. Because the industry profit picture being eight-tenths of 1 percent—

The CHAIRMAN. Yes, but—

Mr. BELL. We would not like to inject any form of pricing or price fixing into this question.

The CHAIRMAN. That is all right; that is what I expected you to answer.

Will you step down, gentlemen?

STATEMENT OF WILLIAM McGAUGHEY, VICE PRESIDENT, AMERICAN MOTORS CORP.

Mr. McGAUGHEY. Mr. Celler, I do have a formal statement here which I would like to request permission to read. However, if you do not have enough time I would be glad to dispense with that. However, I am unaccompanied and I think that this statement does reflect the viewpoint of our company and contains—

The CHAIRMAN. Could you give us an epitome of that statement?

Mr. McGAUGHEY. I will do my best.

The CHAIRMAN. We will accept it for the record.

Mr. McGAUGHEY. I will turn it over here for the record.

(The statement of Mr. McGaughey is as follows:)

STATEMENT OF WILLIAM H. McGAUGHEY, VICE PRESIDENT, AMERICAN MOTORS CORP.

American Motors was formed 26 months ago as a result of the merger of Nash-Kelvinator Corp. and the Hudson Motor Car Co. One of the basic purposes of the merger was to provide a stronger dealer organization to merchandise more widely, economically, and effectively the products of two of the smaller passenger car producers.

Despite a host of complex problems confronted since the merger, our top executives have unquestionably devoted more time to automotive distribution policies and programs during the first 2 years of American Motors' existence than to any other facet of our business.

Expansion of our sales and service coverage of growing markets has been an important phase of this endeavor. Company personnel are working continuously at signing up new dealers and strengthening our existing dealers in order to:

1. Make it more convenient and attractive for our customers to obtain our products and service for these products.
2. To attain a larger production and sales volume.

ADVANCEMENT OF PARTNERSHIP CONCEPT

A significant and unique element of American Motors' distribution approach was the development in 1955 of an 8-point dealer policy designed to advance and strengthen our "partnership" concept between factory and dealer, and to provide safeguards against any possible inequities in our contractual relationships with our dealers.

On January 19, American Motors' president, George Romney, outlined the basic philosophy back of this program in his appearance before Senator Monroney's Subcommittee on Automobile Marketing Practices. His statement also was made part of the record of Representative Klein's Subcommittee on Commerce and Finance in its April 17 hearing on several automotive bills. I will not review these policies in detail, therefore, but will refer to two of them later on in my statement.

I'd like to direct my comments specifically to H. R. 11360 and its companion bill S. 3879, as amended by the Senate on June 19 and referred to this committee.

American Motors is encouraged that the Antitrust Subcommittee of the House Judiciary Committee is holding hearings on this bill. Even the version of the bill as amended by the Senate would be most harmful to small business, to users of motor vehicles, and to the smaller automobile manufacturers.

We interpret this bill as an attempt to compel an automobile manufacturer by legislation to act in "good faith" in his contractual relationships with his dealers. If the dealer can prove to the court that coercion, intimidation, or threat of either, has entered into the relationship, then the dealer is entitled to recover compensatory damages, suit costs, and attorney fees.

CONSEQUENCES OF ARBITRARY BEHAVIOR

Speaking for American Motors, I can state emphatically that no officer or responsible official of our company believes that coercion or intimidation has a place in American business relationships. In our judgment, any business which pursues such practices—whatever the field of endeavor—will sooner or later suffer the consequences in various ways, ranging from loss of company goodwill to adverse judgments in court of law.

We at American Motors feel very strongly that a manufacturer who is striving to achieve or retain a firm position in the market place must in no way engage in practices that tend to diminish the close cooperation that must necessarily exist between factory and dealers. If a manufacturer gains a reputation in the trade for acting in a manner that is unfair, inequitable, or arbitrary, dealers become reluctant to sign up with him, especially in periods of keen competition.

While ethical considerations dictate a type of conduct that is above reproach, we believe there are definite commercial advantages, from a strictly hardheaded business standpoint, in dealing on a fair, honest, and forthright basis with the

people who merchandise our products. We look upon the dealer as our customer. We believe in treating him as any enlightened business treats any regular customer. We try to satisfy him so he'll continue to buy from us.

SPECIFIC PROVISIONS VERSUS AMBIGUOUS LANGUAGE

However, we seriously question whether anyone can legislate good faith, honesty, fairness, or any other qualities that stem from character and state of mind.

If our company should violate any contractual rights any of our dealers have under our franchise, they can bring suit against us. Under the American Motors franchise, our dealers can have their day in court.

In contrast to the definite language in our contract, we feel the language of this bill is so broad and indefinite as to be ambiguous or, at best, susceptible to a wide range of interpretations. It is quite conceivable, for example, that an existing dealer could interpret as factory "coercion and intimidation," or as a violation of the equities of the relationship, the appointment of a new dealer in a geographic area which the first dealer had considered his exclusive market area for selling and servicing the manufacturer's products, even though the franchise did not provide for an exclusive territory.

At a minimum, the ambiguity of the language in the bill would surely place a burden on Federal district courts during the prolonged and involved legal actions that would be required in interpreting the meaning of these broad, generalized provisions.

Furthermore, in the opinion of our own legal counsel, a loose interpretation of section 1 (e) of S. 3879 might well lead to the circumvention or weakening of the antitrust laws. Our counsel reasons this would result from inhibitions upon the manufacturer to add a new automobile dealer or to replace an existing dealer.

We fear this bill would produce a harmful deterrent to the growth of small retail establishments. Opportunities exist today for Americans with only limited working capital to enter the automobile merchandising field. It is possible to determine a dealer applicant's credit rating, and to gain an insight into his local reputation; but no effective means exist for predetermining whether a newcomer to the business will make a strong dealer or an ineffectual one.

Some of our automobile merchants started on a financial shoestring and have developed through hard work and diligent effort into outstanding retailers. Others have tossed in the towel in a matter of months. It is the latter type of individual, who may be susceptible to seeking a scapegoat for his failures, who would find this type of legislation an open invitation to sue the manufacturer.

To minimize the risk of litigation from some future dealer applicant of unknown character, the manufacturer might have to adopt much more stringent policies in the screening and appointment of new dealers. The acceptable candidates may be narrowed down, of necessity, strictly to businessmen of proven experience and tenure in retailing. The shortage of such qualified individuals already is a matter of concern to most car manufacturers, and particularly to the smaller companies. However, the factory may not be able to take the same gamble in the future with the ambitious newcomers who are anxious to break into the business, or with used car dealers who want to broaden their merchandising efforts by seeking new car franchises. Many normally good prospects may be denied the chance to become dealers because of the factory trying to guard against the opportunist with cupidity in his makeup or to avoid harassment from the fringe fellow to whom a possible court judgment against the manufacturer would be an enticing and profitable way to bow in and out of the retailing business.

We greatly fear the consumer's interest will suffer with the enactment of this kind of legislation. The provision in the bill for compensatory damages is almost certain to introduce a restraining influence—and an unhealthy one—on the manufacturer's efforts to build the type of relationship which we term "Cooperative quality dealer program."

MUTUALITY OF FACTORY-DEALER INTEREST

As Mr. Romney pointed out in the Monroney committee, both the nature of the automobile and its marketing establish a mutuality of interest and interdependence between factory and dealer that is far greater than between manufacturers and retailers in most other businesses. In any specific market area, the market penetration for a car manufacturer's product is importantly determined by the service the dealers provide their customers. Substandard dealers are detri-

mental to other dealers as well as to the factory. We're convinced that few dealers seek to protect other dealers who are incompetent or poorly equipped, substandard or nonperformers. They realize that provisions must be made for the replacement of such dealers or the public acceptance and sale of the car line will be adversely affected, and the quality dealers themselves will be handicapped in their relations with the consuming public.

If quality of dealer service to the customer is to be maintained, the manufacturer must continue to evaluate the dealer's performance, and to weed out the dealer who lowers the accepted standards or gives the business a black eye because of unethical trade practices. Otherwise, the rights of the consumer will be abused, the quality dealer will suffer, and a cult of mediocrity will be bred into the automotive distribution and service field.

While we believe this bill would be detrimental to the automotive trade as a whole, it would particularly handicap American Motors in its efforts to strengthen and expand its dealer structure. Not only might the legislation impose costly financial burdens on our company; it could also, because of threats by dissident dealers to take their differences to court, prove a type of intimidation of us as a smaller automobile manufacturer that would be most onerous.

Unlike the larger automobile manufacturers, American Motors maintains no legal department, but rather retains an outside firm of attorneys to handle its legal work. To build a legal staff, or to retain the legal, sales, and technical personnel necessary to contest the barrage of lawsuits which this bill could conceivably encourage, certainly would prove to be a most costly undertaking for our company.

Since the formation of American Motors, our car divisions have experienced a substantial turnover in their dealer bodies. In American Motors' first 2 years, more than a thousand dealers have taken on Nash or Hudson franchises for the first time. In the same period, a considerable number of dealers, for various reasons—their own or ours—have no longer been franchised by our company. In this period only five lawsuits by American Motors dealers involving their franchises have had to be settled in the courts. The almost complete absence of litigation in face of a substantial turnover of dealers would indicate that our termination procedures have been handled in a fair and equitable manner. As mentioned above, our present franchises provide that our dealers may have their day in court. However, we believe our fair and equitable treatment of all our dealers is the primary reason we have kept our differences out of the courtroom.

PERIODIC REVIEW OF FRANCHISE

Moreover, American Motors has recently established dealer advisory boards in both the Nash and Hudson divisions, both consisting of dealers from 21 zones, representing all the major geographic areas in the United States. Dealer representatives on the boards are elected by the dealers themselves. Among their functions is the periodic review with top factory officials of the sales franchise to keep it on a practical, fair, and equitable partnership basis. Members of the Nash Dealer Advisory Board, for example, reviewed the Nash franchise on May 17 and 18, and approved a method of signing new and existing dealers which they agreed was in the interest of Nash dealers as a whole.

In addition, joint company-dealer appeal boards have been set up which exercise final authority in dealer cancellation cases. Through this mechanism, dealer representatives reflect the viewpoints of dealers and offset any inadvertent tendency of factory officials to overlook pertinent elements of consideration.

These safeguards for dealers—which were widely lauded throughout the automotive trade when announced as part of the American Motors eight-point dealer policy program—make it unnecessary, in our opinion, to compel a company such as ours to "act in good faith." As pointed out above, we have been acting in good faith in our dealer relations and have every incentive to continue to do so. The introduction of legislative compulsion could well introduce serious complexities which might invalidate or retard our dealer expansion and product programs which have been launched at great expense.

AN IMPORTANT PRINCIPLE

An important American principle is under consideration in connection with this bill:

Will voluntary cooperation and action, or legislation, attain the most beneficial results for the people?

Let me make this clear: We do not minimize the effectiveness of Federal legislation in dealing with abuses resulting from overconcentration of economic power.

We believe you will agree, however, that corrective powers voluntarily exercised, too, have played a vitally important part in the development of the American economy.

We believe the searching reappraisals of automotive factory-dealer relationships begun earlier this year by the industry will result in greater cooperation between manufacturer and dealer, and in a narrowing of their points of difference.

We would sorely regret entering an era of factory-dealer relations in which the practices of the trade were materially influenced by a body of legal precedents, judicial rulings, and the burden of compensatory damages.

A stronger automotive economy certainly can be built through a spirit of teamwork directed toward better serving the consumer rather than through resort to the courts for the airing of grievances in factory-dealer relationships.

Groundwork has been laid for American Motors to join with its dealers in the formulation of additional policies and programs that can produce beneficial results for consumers, dealers, employees, and stockholders.

We sincerely urge the Congress to refrain from interference in the area of our franchise agreements until voluntary, democratic processes have had a fair chance to operate.

In conclusion, may I reaffirm the deep confidence American Motors has in the vigor, resourcefulness, and creative approach of young Americans who want to enter the automobile business. We'd like to keep the door of opportunity wide open for them.

As far as American Motors is concerned, we are a company with young ideas and a new approach to personal transportation. We are embarked on an extensive expansion of our franchised dealers in many sections of the United States. We feel in that way American Motors can increase its ability to serve more consumers more effectively, and thus can provide the American motorist with a wider range of values in his selection of the next family car.

Mr. McGAUGHEY. Mr. Celler, just to brief the statement to you, it is pointed out that our company, American Motors Corp., was formed just 26 months ago yesterday. We are one of the companies that resulted from the mergers you have read about in the automobile industry.

And, of course, one of the primary reasons for the merger in our case was to enable two small automobile manufacturers to have a stronger distribution system.

The CHAIRMAN. Name those, for the record.

Mr. McGAUGHEY. They were Nash-Kelvinator Corp. which was established in 1916, and the Hudson Motor Car Co., established in 1909. The merger took place on May 1, 1954.

So, this problem of distribution is one that has been very close to our hearts because that is one of the basic reasons for the merger.

I might say that in the past 2 years, even though we have been confronted with a great variety of complex problems growing out of this merger, our top management, without question, has devoted more time to automotive distribution policies and distribution problems and programs than any other facet of our business.

I might mention that, incidentally, we are in the appliance business and the plastics business and the export business and defense business, and so on, but despite that, automotive distribution has had the No. 1 spot, as far as our company is concerned, for the past 26 months.

Now, I believe you are familiar, Mr. Celler, with our eight-point statement on dealer policy. Mr. Romney did spell out that policy in some detail before Senator Monroney's committee on January 19 and it is in the record of Representative Klein's Subcommittee on Commerce and Finance, so I will not trouble you with that policy state-

ment, other than that I want to point out and refer to two of the elements in this program before I get through.

Now, we are glad that you are holding hearings on this bill, because when the companion bill came up, Mr. Romney wired the Senator and requested the hearings be held, so that we are glad to be afforded this opportunity at this time.

The main reason we are opposed to this bill, and we are very strongly opposed to it, is that we feel that this bill would be injurious to small business—and I am going to define what I mean by small business—the users of motor vehicles and particularly, the smaller automobile manufacturers.

Now, I am not speaking for all the small manufacturers. I am speaking strictly and solely for American Motors Corp. this afternoon.

We interpret this bill as an attempt to compel the automobile manufacturer by legislation to act in good faith, and if a dealer can prove to the court coercion, intimidation, or threat of either as entering into the relationship, then the dealer is entitled to recover compensatory damages and attorney fees.

That is our understanding of the basic purpose of the bill.

Now speaking just for our own company, I can state emphatically that no responsible officer or official of our company believes that coercion or intimidation has a place in American business.

We feel that any company that does attempt either practice is going to suffer the consequences. We believe, furthermore, that a company like ours which is striving to gain and retain a place in the market place, that it behooves us—

The CHAIRMAN. Yes; but suppose you have a company which is much, much larger than yours and has tremendous power, why cannot they coerce?

Mr. McGAUGHEY. I cannot speak for the other companies. All I am saying is that companies that coerce are going to suffer the consequences. Now, perhaps, a hearing of this kind is one of the consequences.

The CHAIRMAN. What consequences will there be?

Mr. McGAUGHEY. I am sorry.

The CHAIRMAN. What consequences will there be? Suppose they do coerce? What would happen under the present situation?

Mr. McGAUGHEY. Under the present situation, there can be cases taken to court.

The CHAIRMAN. At the present time?

Mr. McGAUGHEY. That is true under our franchise, Mr. Celler. And I think that the loss of the company's goodwill is another consequence.

The CHAIRMAN. Yes; but suppose General Motors has a franchise with you and you sell cars in my city and I happen to be the nephew of Mr. Curtice and they say, "Never mind you, I am going to give this to my nephew," you are out in the cold despite your investment.

Mr. McGAUGHEY. Well, sir, I cannot speak for General Motors because I am not familiar with their franchise and I am not posted on that part.

Now, I would be very glad—

The CHAIRMAN. Your company is not in a position, probably, to do that—

Mr. McGAUGHEY. We do not, anyway.

The CHAIRMAN (continuing). Because you are not strong enough yet. I hope you will become stronger someday. But General Motors has the power and potency to do that very thing.

Mr. McGAUGHEY. That may be so, Mr. Chairman. I have no specific evidence. I have read a lot about it in the paper. But as far as our company——

The CHAIRMAN. They could go to a dealer and say, "You are not selling enough cars," and that dealer may be selling a vast amount of cars.

Mr. McGAUGHEY. That may be true.

The CHAIRMAN. They do not like the color of his necktie, and they say, "We have the right to cancel your contract for good reasons or bad reasons."

Mr. McGAUGHEY. Mr. Celler——

The CHAIRMAN. And then what is he going to do?

Mr. McGAUGHEY. I think you are going to have a General Motors witness a week from today, if I understand correctly. I prefer that you direct the question to him.

The CHAIRMAN. No. But you associate yourself with General Motors.

Mr. McGAUGHEY. No; I am not.

The CHAIRMAN. What is that?

Mr. McGAUGHEY. I am not associating myself with General Motors in any way, shape or form, now or in the future.

The CHAIRMAN. You are on the side of General Motors in your argument now.

Mr. McGAUGHEY. That may be true. I have not heard the General Motors argument. I assume they are opposed to this bill, but I am not familiar with their views.

The CHAIRMAN. I am quite sure you are not so naive not to know their views.

Mr. McGAUGHEY. Would you tell me what they are, sir? I would be glad to know.

The CHAIRMAN. They are opposed to the bill.

Mr. McGAUGHEY. So are we, for different reasons, I assume.

The CHAIRMAN. All right. We will listen to you further.

Mr. McGAUGHEY. Thank you.

While ethical considerations dictate a type of conduct that is above reproach, we believe that there are definite commercial advantages from a strictly hard-headed business viewpoint in dealing in a fair, honest, and forthright basis with the people who merchandise our products.

Now, Mr. Celler, we consider the dealer as our customer, and in dealing with our customer, we want to deal with him as any reputable businessman would deal with any regular customer. We want him to continue to buy from us.

Now, probably it is a little more important in our case to get our dealers to buy from us than it might be with a company that has many more dealers than we have. All told, we have about 2,800 dealers. We are not anxious to get any smaller dealer body; we are not anxious to go out of our way to alienate a dealer so that he leaves us.

We are trying as hard as we can to effect a close working relationship with our dealers so that they will stay with us and buy our Nashes and our Ramblers and our Hudsons. And that is one of our primary

objectives in having this 8-point statement of program of dealer policy.

Mr. MALETZ. Mr. Chairman——

Mr. McGaughey, if you were told that certain automobile manufacturers, forgetting about American Motors, now——

Mr. MCGAUGHEY. Certainly.

Mr. MALETZ (continuing). That certain automobile manufacturers in fact were practicing coercion or intimidation upon their dealers, would you be in favor of this bill?

Mr. MCGAUGHEY. I would not condone any intimidation——

Mr. MALETZ. That is not my question, sir. If the evidence in the record demonstrated to your complete satisfaction that coercive practices were used by automobile manufacturers, would you be for or against this bill?

Mr. MCGAUGHEY. I can answer that very clearly: I would still be against the bill emphatically, and I will tell you why.

Mr. MALETZ. All right.

Mr. MCGAUGHEY. I think the bill would hurt us as a small manufacturer more than it would hurt the big companies.

Now, I think you are familiar with the statement that Senator Monroney is reported in the press to have made when the letter from the Department of Justice was read. He said:

The Department in this letter is protecting the hunter from the rabbit.

Well, now, that was a very colorful statement. To use a different analogy, I would like to consider ourselves a rabbit. We are in the same cage with a couple of dinosaurs. We would prefer not to have that cage so restricted that we get too close to them. We need a little turning-around room.

We consider this bill as narrowing the area in which we can operate. We need flexibility and leeway, and so on, to get out of the way of the dinosaurs.

The CHAIRMAN. I am curious to know why that is so.

Mr. MCGAUGHEY. Mr. Celler, we feel that there is a definite competitive advantage for American Motors as a small company to do better with its dealers than General Motors does with its dealers and Chrysler with its, and Ford with its. We feel that this bill—now, I am not a lawyer—it could be that my interpretation is cockeyed—but we feel that this bill is going to introduce certain rigidities into that dealer-franchise relationship that will not be to our advantage; it will not be to the advantage of the big companies. But we feel the bigger companies can adjust to those inflexible conditions more than we can as a small company.

We do not have the financial resources; we do not have the strength that they do, but we do have ingenuity, good faith, good relationships, good cooperation, and I do not feel that this bill would encourage us to go in the direction that we are now going.

Mr. MALETZ. Mr. McGaughey——

Mr. MCGAUGHEY. Yes, sir.

Mr. MALETZ. I think that you have indicated that American Motors always practices good faith——

Mr. MCGAUGHEY. We try to.

Mr. MALETZ. In its dealings, in its relationships with its dealers.

Mr. MCGAUGHEY. That is right.

Mr. MALETZ. Now, if that is the case, how would this bill affect in any way, shape, or form American Motors' franchise arrangements or transactions with its dealers?

Mr. McGAUGHEY. I am going to cover that in my statement, Mr. Maletz.

Mr. MALETZ. Very well.

Mr. McGAUGHEY. We seriously question whether anyone can legislate good faith, honesty, fairness, or any other qualities that stem from character and state of mind.

If our company should violate any contractual right any of our dealers have with us under our franchise, they can bring suit against us. Under the American Motors' franchise our dealers have their day in court, Mr. Celler, in contrast to the definite language of our contract—and I have got it with me—I have got the franchise with me.

We feel the language of this bill is so broad and indefinite as to be ambiguous, and at best susceptible of a wide range of interpretation. And I think we had an example earlier this afternoon of the wide range of interpretation that is possible under this bill.

The CHAIRMAN. We should like to have that franchise in the record.

Mr. McGAUGHEY. Yes, sir.

(The franchise agreement above referred to is as follows:)

NASH DEALER FRANCHISE PROVISIONS, 1956

PURPOSES OF AGREEMENT

Both the dealer and the zone realize that the success of the business to be carried on by them is dependent upon the good will of the general public toward manufacturer's products. It is further realized that such good will can best be cultivated and retained by a policy of business conduct that is fair and honest to the general public and to all other dealers and by the practice of providing to owners of manufacturer's products prompt and efficient service at reasonable cost.

It is, therefore, the purpose of this franchise agreement to set forth in a clear and understandable manner the terms and conditions under which dealer and zone will do business together and to outline and specify their duties and responsibilities toward the general public, owners of manufacturer's products and other dealers so that good will for manufacturer's products will increase in the area where their business is transacted.

EFFECT OF PROVISIONS

The provisions which follow are incorporated by reference as a part of the dealer franchise agreement which shall govern all transactions and relations between the parties thereto during the period provided.

DEALER'S SELLING RIGHTS—MOTOR VEHICLES, PARTS, AND ACCESSORIES

1. As long as this franchise agreement shall remain in effect, dealer shall have the nonexclusive right to purchase from zone and resell motor vehicles and manufacturer's parts and accessories.

STOCK OF MOTOR VEHICLES

2. To properly represent and promote the sale of motor vehicles in each price class in dealer's potential market, dealer shall purchase and keep on hand at all times an adequate stock of motor vehicles of all series, with such assortment of models as zone may deem necessary.

REPORTS AND ESTIMATES

3. To permit the manufacturer to keep its production of motor vehicles in line with retail sales, dealer agrees to furnish zone every 10 days with a report on standard 10-day report forms supplied by the zone, which will show retail sales of new and used motor vehicles for the 10-day period, new and used motor vehicle stocks and unfilled orders at the end of such period. Dealer also agrees

to furnish zone with such other reports and information as may be requested from time to time by zone pertaining to the business, including an estimate, each month, of dealer's requirements for the 3 succeeding months, on form supplied by the zone.

PURCHASE ORDERS

4. All orders for motor vehicles shall be submitted in writing on car purchase order forms supplied by zone. Orders for motor vehicles, parts and accessories shall be placed with the zone from time to time during each month on dates specified in accordance with the policies of the zone. The order for any standard motor vehicle, part or accessory may be canceled by either the dealer or the zone by giving written notice to such effect in case shipment of such motor vehicle, part or accessory is not made during the months scheduled for its delivery. The order for any special motor vehicle (incorporating features other than those contained in standard motor vehicles) may be canceled only by the zone if shipment is not made during the months scheduled for its delivery.

DEALER'S PRICES

5. Zone will from time to time advise the dealer of the prices of motor vehicles, parts and accessories established by the zone at which sales will be made to dealer hereunder, and it is agreed that the zone shall have the right to change prices at any time. All changes in prices on motor vehicles shall be specified in price list bulletins. Any such price list bulletin will specify the effective date thereof and any pending orders for motor vehicles which have not been shipped to the dealer before such effective date will thereafter be filled only at the new prices stated in such price list bulletin. Dealer may cancel any such pending order by notice in writing given before shipment to the dealer has been made.

TERMS OF PURCHASE

6. (a) *Motor vehicles.*—Terms shall be cash or sight draft with bill of lading attached payable with collection charges at dealer's current net prices, plus an amount to cover any Federal, State, municipal or other taxes which the manufacturer or zone is required to pay and any transportation, delivery or other handling charges required to be paid.

(b) *Parts and accessories.*—Terms shall be net cash, payable on the 10th of the month following date of billing, at dealer's current prices specified in dealer's current price list, plus an amount to cover any Federal, State, municipal or other taxes which the manufacturer or zone is required to pay. Zone, however, reserves the right to ship C. O. D.

STOCK OF PARTS AND ACCESSORIES

7. To provide proper service to owners of motor vehicles, dealer shall purchase and keep on hand at all times an adequate stock of new manufacturer's parts and accessories which in the opinion of the zone will inventory at all times at dealer's net cost in amount sufficient for such purpose. Zone and/or its authorized representatives shall have the right to inventory such stock of parts and accessories at reasonable times. Dealer will not sell, offer for sale or use in repair work, as new manufacturer's parts, any parts which are not in fact manufactured or approved by the manufacturer and sold hereunder for use in making service parts replacements in motor vehicles.

RETURN OF PARTS AND ACCESSORIES

8. (a) Within 30 days after receiving any new manufacturer's part or accessory purchased hereunder, the dealer may return the same to the destination specified by zone, transportation charges prepaid, for credit at dealer's current net price, provided any such part or accessory has not been used or damaged.

(b) If any new manufacturer's part or accessory purchased hereunder is defective when received, the dealer, upon receiving authorization from the zone, may return the same to the destination specified by zone, transportation charges prepaid, for credit at dealer's current net price. Transportation charges prepaid thereon will be credited to dealer's account.

(c) If dealer desires to return a portion of his stock of parts or accessories, he may submit to zone a list of such parts and accessories as he desires to return for credit. Zone will advise dealer of the parts and accessories which it is willing to accept for return and credit and the price to be allowed therefor. Dealer may then ship such accepted parts and accessories to the destination specified by zone, transportation charges prepaid.

METHOD OF DELIVERY AND RESPONSIBILITY THEREFOR

9. (a) Zone may ship motor vehicles, parts, accessories and other merchandise ordered hereunder by any means of transportation and from whatever point it may select. Zone may elect at any time to have the dealer incur or pay the transportation and delivery charges to the carrier or other transporter or zone may incur or pay the same.

(b) In the event zone has dealer incur or pay transportation and delivery charges to the carrier or other transporter, the responsibility of the zone for loss or damage to shipments shall cease upon delivery to the carrier or other transporter.

(c) In the event zone incurs or pays transportation and delivery charges, dealer will pay to zone such amounts as are established by zone from time to time to cover such charges, and dealer will advise zone of all claims for loss or damage to shipments while in the possession of the carrier or other transporter within 10 days after date of delivery to dealer.

(d) On all shipments dealer shall be responsible for and shall pay any charges for diversions made at the request of dealer or by reason of dealer's failure to accept shipments and all charges for demurrage, storage, or other expense incurred after arrival at destination of shipments.

CAPITAL REQUIREMENTS

10. The dealer acknowledges that the proper conduct of his business with the zone under this franchise agreement requires that he at all times have a proper net working capital. Hence, the dealer agrees to originally have and at all times maintain and actually employ in his business such amounts of net working capital as the zone shall from time to time deem necessary for the proper operation of such business in accordance with the reasonable standards set up by the zone.

STANDARD ACCOUNTING SYSTEM

11. Dealer agrees to provide facilities and to install therein and keep up to date an accounting system approved by the zone and to furnish to the zone in accordance with such accounting system, on or before the 10th of each month, a complete and accurate balance sheet and operating statement with supporting data on forms approved by the zone covering the preceding month's operations. The zone and/or its authorized representatives shall have the right at reasonable times to inspect the records and accounts with all supporting data of dealer's business, with the right to make copies of any part of same.

DEALER'S SALES AND SERVICE FACILITIES

12. Dealer will maintain a place of business including salesroom, service department, parts and accessories department, and new- and used-car display and servicing facilities satisfactory to zone. Zone shall have the right at all reasonable times in business hours to inspect said place of business and such facilities.

DEALER'S SIGNS

13. Dealer agrees to purchase, erect, and maintain at his expense the following signs:

(a) A standard authorized service sign on a suitable location on the outside of dealer's service building;

(b) A standard product sign in a suitable place outside dealer's salesroom, provided the erection thereof is not prohibited by law;

(c) Such other signs as are deemed necessary by the zone to advertise dealer's business.

ADVERTISING

14. Because of the effect that advertising may have on the sale of manufacturer's products and the good will of the dealer, the manufacturer and other dealers, the dealer agrees to use only advertising pertaining to manufacturer's products that is supplied or approved in advance by the zone. Dealer further agrees to accept and pay such charges as are made necessary under the zone's advertising policy as outlined from time to time.

SERVICE TO OWNERS

15. Both dealer and zone realize that it is of primary importance to maintain the good will of owners and that this can best be achieved by rendering

at reasonable cost prompt and efficient service. Dealer therefore agrees as follows:

(a) *Owner's service policy.*—Dealer shall execute and deliver to each owner who purchases a new motor vehicle from him at retail an owner's service policy on forms furnished by the zone, which forms shall be subject to change at any time by the zone. Dealer agrees to promptly perform and fulfill all terms and conditions of any such policy and he hereby authorizes the zone to charge his account with coupons covering inspections, under any such policies, performed by other dealers on new motor vehicles sold at retail by dealer.

(b) *Conditioning of motor vehicles.*—Dealer shall condition every new motor vehicle before delivery to an owner in accordance with the zone's predelivery inspection standards in effect.

(c) *Service manual and bulletin.*—Dealer shall at all times conform to the service policies and practices as contained in the current service manual and bulletins issued by the zone.

CHANGES IN DESIGN AND IMPROVEMENTS

16. It is mutually agreed that the zone and/or the manufacturer shall have the right to discontinue selling any model of motor vehicle or item of manufacturer's parts and accessories and to make changes in design or add any improvement on motor vehicles, parts or accessories, at any time, without incurring any obligation to make or install same on any motor vehicles, parts or accessories produced pursuant to dealer's orders or previously shipped to dealer.

PRICE PROTECTION

17. Should the list price of a current model motor vehicle be reduced during the current model year, zone will refund or credit to dealer, on all such new and unused current model motor vehicles, which were purchased hereunder by dealer during current model year and which are in the stock of unsold new and unused motor vehicles of dealer, an amount equal to the difference between the price dealer shall have paid for such current model motor vehicles and the reduced amount then payable for the same, less previous refunds or credits made thereon, if any. No refund or credit will be allowed hereunder unless claim therefor is made by dealer, supported by affidavits or other evidence required by zone, within 30 days after the effective date of such reduction.

REBATE ON MODEL CHANGE

18. Should the manufacturer at any time discontinue current models of motor vehicles and substitute in place thereof new models, a rebate will be paid or credited to dealer on such current new and unused motor vehicles of such discontinued models which are in the stock of dealer, as shall be in excess of 3 percent of the quantity of motor vehicles of such discontinued models purchased hereunder by the dealer prior to such change. The rebate so paid or credited shall not be less than 4 percent of the average list price of such current model motor vehicles so discontinued; however, the exact amount of such rebate and the time when paid or credited will be determined by the manufacturer. Dealer will receive a proportionate amount if fractions of a motor vehicle are involved. Demonstrators are not to be included in determining the rebate to be paid hereunder. The date on which the stock of discontinued models of dealer will be determined shall be the date on which new models are officially announced to the general public. No rebate will be allowed hereunder unless claim therefor is made by dealer, supported by affidavits or other evidence required by zone, within 30 days after such date of official announcement.

FAILURE TO PERFORM

19. Zone shall not be liable or responsible in any manner to dealer for failure or delay to fill any order placed hereunder or for other failures to perform when same is due to or the result of strikes or other labor troubles, fires, floods, material or labor shortages, embargoes, stoppages in transit, direct or indirect acts, regulations or orders of Government, the zone's allocation of motor vehicles and other products to and among dealers and other customers on such basis as zone may determine, war, sabotage, acts of God or the public enemy, and other causes beyond the control of the zone and/or the manufacturer

CANCELLATION OF FRANCHISE AGREEMENT

20. Either party may cancel this franchise agreement at any time, provided the party desiring to so cancel the same gives to the other a written notice of such intention at least 90 days prior to the effective date specified for such cancellation. Either party may consent in writing to a reduction of such 90-day period. The parties may mutually cancel this franchise agreement at any time by written agreement.

Zone may, at its option, cancel this franchise agreement immediately upon giving written notice of such cancellation in the event: (1) Dealer shall breach any of the covenants of this franchise agreement; (2) There are instituted proceedings by or against dealer in bankruptcy or under insolvency laws for or corporate reorganization or receivership or dissolution; (3) dealer makes an assignment for the benefit of creditors; (4) the admitted insolvency of dealer or of any member of dealer, if a partnership; (5) dealer's usual place of business is closed for business for a period in excess of 10 days; (6) dealer dies or ceases to exist; (7) dealer is a partnership or a corporation and disagreements arise between the members of the partnership or the stockholders, officers or managers of the corporation which cause zone to deem that its interests may be imperiled; (8) dealer lacks sufficient working capital in the opinion of zone for the carrying on of this franchise agreement according to reasonable standards set up by the zone; (9) dealer or any of its officers or managers are convicted of any felony or convert or embezzle any property or funds of others; (10) dealer fails to secure or renew a license or permit for its business required by law or if any such license or permit is revoked or suspended; (11) dealer fails to properly develop the market assigned to dealer in accordance with reasonable standards specified by the zone; (12) dealer changes the location of his place of business or opens an additional place of business without advance written approval of the zone; (13) dealer attempts to assign this franchise agreement without written consent of the zone. Dealer agrees to immediately cause zone to be informed in writing of the happening of any event specified in this paragraph.

The cancellation of this franchise agreement will not release the dealer from the payment of any sum that he may owe the zone. Such cancellation will, however, cancel all orders for motor vehicles, parts, accessories and other merchandise which have not been shipped prior to the effective date of such cancellation. During the period between the giving of any notice of cancellation hereunder and the effective date thereof, zone will attempt to fill all of dealer's orders but will not be required to fill orders placed which would exceed dealer's normal deliveries for such period, as determined by zone.

AGREEMENT OF ZONE TO REPURCHASE

21. (a) Should this franchise agreement be canceled or expire without being superseded by a new form of franchise agreement, then zone agrees to purchase on the effective date of termination the following:

(1) All new, unused, and undamaged current model motor vehicles in dealer's possession or control at dealer's net price, plus transportation charges paid by dealer, excepting only demonstrators and special motor vehicles as defined herein which may or may not be purchased by zone at its option;

(2) All unused and undamaged manufacturer's parts for the current and 3 preceding models, which were purchased from zone and are then the property of dealer, at dealer's current net price, exclusive of transportation charges paid thereon, less a handling charge of 15 percent of the purchase price and less any cost incurred by zone for reconditioning such parts to place them in their original salable condition. Dealer shall deliver such parts for inspection f. o. b. any point designated by zone before completion of the purchase;

(3) All the current unused and undamaged manufacturer's accessories, which were purchased from zone during the 6 months immediately preceding the effective date of termination and are then the property of dealer, at dealer's current net price, exclusive of transportation charges paid thereon, less a handling charge of 15 percent of the purchase price. Dealer shall deliver such accessories for inspection f. o. b. any point designated by zone before completion of the purchase;

(4) All standard signs as listed in zone's catalog of approved signs, belonging to dealer at a price mutually agreed upon by zone and dealer. If

no mutual agreement as to price can be reached, the price shall be determined by a third party mutually selected by zone and dealer.

(5) All special tools in good condition of a type recommended by zone and adapted only to the servicing of motor vehicles as defined herein and which were purchased by dealer during the 12 months preceding the effective date of termination at prices to be mutually agreed upon by zone and dealer. If no mutual agreement as to prices can be reached, the prices shall be determined by a third party mutually selected by zone and dealer.

(b) Within 10 days from the effective date of termination, dealer shall furnish zone with a list of the motor vehicles, parts, signs, accessories, and special tools hereinbefore specified that he desires zone to purchase. If dealer fails to timely furnish such list, zone shall not be required to purchase any of such items, but in such event zone shall have an option to purchase as of the effective date of termination any or all of the items listed in provisions (1) through (5) of section (a) above upon giving written notice to dealer of zone's intention to exercise such option.

(c) Dealer will deliver instruments satisfactory to zone conveying good title to all items to be purchased. Dealer will satisfy any lien or other charge of any kind and at dealer's expense will comply with any law necessary to protect the zone's purchase of such items.

(d) Delivery of all items purchased will be made by dealer to zone in accordance with zone's instructions immediately upon tender of the purchase price as determined above.

AGREEMENT OF DEALER TO DISCONTINUE USE OF TRADE NAMES

22. Upon the termination of this franchise agreement, the dealer agrees to immediately discontinue the use of the trade names or trade marks of the zone or manufacturer; to remove all signs containing any such trade names or trade marks; to change the name under which he does business if it contains any such trade name and to certify to the zone that dealer has rendered unfit for the use originally intended or that dealer will not use for the purpose for which it was originally intended all stationery, printed matter, advertising, advertising cuts containing any such trade name or trade mark and that dealer will not represent and will discontinue practices which might make it appear that he is still handling manufacturer's products, all without cost or expense to the zone.

WARRANTY

23. There are no warranties, expressed or implied, made by the zone or the manufacturer of products sold hereunder, except the manufacturer's warranty which in printed form is furnished to the owner with each motor vehicle. Dealer shall make no warranties concerning such products other than those contained in such manufacturer's warranty.

The dealer agrees to install any repair parts supplied by zone and required to fulfill conditions of the manufacturer's warranty on any motor vehicle without charge to the owner thereof. If the replaced parts are returned to zone and found by it to be defective, zone will pay or credit to dealer that portion of dealer's current flat rate charge for installing any such repair parts as is specified in the current price list bulletin in effect at the date of such installation.

ZONE'S POLICIES

24. The dealer agrees to abide by all policies of the zone now effective or which in the future may become effective insofar as the same relate to or in any way pertain to the subject matter of this franchise agreement.

INDEBTEDNESS

25. Dealer agrees that the zone may deduct from any moneys belonging to the dealer at any time in the possession of the zone, before making settlement with dealer, such sums as are necessary to pay any indebtedness owed by dealer to the zone or to the manufacturer or to other dealers under the terms of this franchise agreement.

DEALER NOT AGENT

26. This franchise agreement does not in any respect make dealer an agent for the zone or authorize the dealer to transact any business in its name or to incur any obligation or liability for or against the zone.

NO IMPLIED WAIVERS

27. Failure of either party at any time to require performance of any provision of this franchise agreement shall not affect the right to require full performance thereof at any time thereafter and the waiver by either party of a breach of any such provision shall not be taken or held to be a waiver of any subsequent breach thereof or as nullifying the effectiveness of such provision.

NO VERBAL AGREEMENTS OR CHANGES IN FRANCHISE AGREEMENT

28. It is mutually agreed by the parties that no addition, change, or erasure of any printed portion of this franchise agreement, except the filling in of specified blank spaces and lines, shall be valid or binding upon either party hereto and that no verbal agreements, of any nature, relating to the subject matter of this franchise agreement or to any relationship between the parties, will be considered valid or enforceable.

NOTICES

29. Any notice given under this franchise agreement may be delivered in person, or by mail, properly posted in an envelope addressed to the respective parties at the last known address given by either party to the other. Any such notice shall be considered to have been given when personally delivered or mailed in the manner hereinbefore provided.

FRANCHISE AGREEMENT NOT ASSIGNABLE

30. The dealer shall not transfer or assign this franchise agreement, or any part thereof, or any rights thereunder without the written consent of the zone. It shall, however, inure to the benefit of and be binding upon the dealer, and upon the zone and its successors and assigns.

The CHAIRMAN. And that franchise gives the dealer his day in court; is that it?

Mr. MCGAUGHEY. This franchise spells out the specific reasons for which a dealer could be canceled, and if we go beyond those reasons, he has every right to go to court to find out the reason why.

So we feel that he is protected not only under the franchise, but also under two other mechanisms that we have which I would like to tell you about.

The CHAIRMAN. Does that franchise contain a provision that the dealer can go into court and sue under certain circumstances?

Mr. MCGAUGHEY. It does not say it just that way, Mr. Celler, but our dealers have gone to court under alleged violations of this franchise. As I say, we have very specific provisions setting up the rights of the factory and the rights of the dealers.

The CHAIRMAN. What has been the experience of your dealers who went to court?

Mr. MCGAUGHEY. We have only had 5 lawsuits, over these franchise provisions over the past 2 years, Mr. Celler, which is one indication that our relationship with the dealers has been fair and equitable. Otherwise—

The CHAIRMAN. What happened in those cases?

Mr. MCGAUGHEY. I do not have the verdicts before me. I would be very glad to get them for you. I think 1 or 2 of them may still be pending. But in 26 months, there have only been 5 lawsuits over franchise provisions taken to court.

Now, can I continue with my statement?

The CHAIRMAN. Yes, sir.

Mr. MALETZ. I have just glanced hurriedly over this franchise agreement which I had not seen before.

Mr. MCGAUGHEY. Surely.

Mr. MALETZ. On page 6, "Cancellation of franchise agreement," it is provided, and I quote:

Either party may cancel this franchise agreement at any time, provided the party desiring to so cancel the same gives the other a written notice of such intention at least 90 days prior to the effective date specified for such cancellation. Either party may consent in writing to a reduction of such 90-day period. The parties may mutually cancel this franchise agreement at any time by written agreement.

Now, does that, in your view, Mr. McGaughey—

Mr. MCGAUGHEY. I wish you would keep on reading, Mr. Maletz.

Mr. MALETZ. Surely.

Then the next provision:

Zone may, at its option, cancel this franchise agreement immediately upon giving written notice of such cancellation in the event—

and you specify 13 separate considerations.

Mr. MCGAUGHEY. That is right; surely.

Mr. MALETZ. Does this mean that zone can cancel only for cause, but that the headquarters of American Motors can cancel on 90 days' notice for any reason whatsoever?

Mr. MCGAUGHEY. That is right.

Mr. MALETZ. Well then, if the headquarters of American Motors cancels within 90 days, how can the dealer go into court?

Mr. MCGAUGHEY. Why can't he?

Mr. MALETZ. Because the headquarters of American Motors has reserved to itself the right to cancel for any reason whatsoever.

Mr. MCGAUGHEY. Well, the dealers, regardless of that, have still gone into court, Mr. Maletz.

Mr. MALETZ. They may have gone into court, but as the Chairman asked you, have they been successful?

Mr. MCGAUGHEY. I will be glad to find out. I don't have that. I am sorry. That is an oversight on my part.

The CHAIRMAN. That is similar to contracts other companies have, of which there have been volumes of complaint, namely, that one of the parties to the contract can cancel out the other.

Mr. MCGAUGHEY. Mr. Celler—

The CHAIRMAN. For good cause or bad cause.

Mr. MCGAUGHEY. Our lawyers feel, rightly or wrongly, because we have 13 pretty specific reasons there for cancellation, that if we go beyond those, we are wide open as far as the courts are concerned.

The CHAIRMAN. Is it not true that the head office of your company could cancel any contract it wishes at any time, for any cause—

Mr. MCGAUGHEY. That is right.

The CHAIRMAN. On 90-day notice; is that correct?

Mr. MCGAUGHEY. That is right.

The CHAIRMAN. And then if it does that, what kind of right has the dealer? He has an empty right. His going to court would avail him naught.

Mr. MCGAUGHEY. At least—

The CHAIRMAN. The purpose of our bill is to give the dealer some sort of right under those circumstances. He can go into court, and if he can prove that the manufacturer showed bad faith, then he can get damages.

Mr. MCGAUGHEY. I certainly understand the purpose of your bill and we feel that because our contract, I believe, is more specific than some of the others on provisions for cancellation plus the fact that we have 2 safeguards, Mr. Celler, 1 being this dealer advisory board, on which we have representatives from 21 of our zones on it, to work

out the franchise provisions, and the Nash division, incidentally, spent 2 days on that in May—they set up what they considered were adequate provisions for signing up new dealers and for canceling dealers and they agreed that it was in the interests of the Nash dealers, as a whole—now, that is 1 proviso, 1 safeguard. The other is the fact that we have this appeals board.

The CHAIRMAN. Would your company be willing—this is rather a brash question for me to ask—

Mr. McGAUGHEY. Not at all.

The CHAIRMAN. Would your company be willing to make those zone conditions applicable to the decision at headquarters?

Mr. McGAUGHEY. I cannot speak for our company president and top sales officials in this area. I would be very glad to put the question up to them to see how far they would be willing to go.

Now, I would like to mention that our franchise is a moving document. We are not tied to that particular set of conditions. We are working on it all the time from the standpoint of making it more fair and more equitable. We are getting the viewpoints of our dealers to help shape it that way.

For that reason we feel that this two-way exchange of communications between factory and dealer is a lot more effective than rushing into legislation to introduce some rigidities into this system, which we would regret seeing happen.

We feel that at a minimum the ambiguity of the language would surely place a burden on the Federal district courts during the prolonged and involved legal actions that would be required in interpreting the meaning of these broad, generalized provisions of the bill.

Furthermore, in the opinion of our legal counsel—and this is a legal man's opinion—a loose interpretation of section I (e) of the Senate bill—that is S. 3879—might well lead to the circumvention or weakening of the antitrust laws.

Our counsel reasons that this would result from inhibitions upon the manufacturer to add a new automobile dealer or to replace an existing dealer.

The CHAIRMAN. I do not mind your company's saying this—

Mr. McGAUGHEY. Surely.

The CHAIRMAN. But when General Motors or Ford comes in here and says that one of the objections to the bill is that it may impinge upon or hurt the antitrust laws, then they are speaking out of both sides of their mouth, because they have offended against the antitrust laws many, many times, particularly General Motors.

Mr. McGAUGHEY. I do not think our company is in quite the same position, Mr. Celler; I hope we never will be. I am interested in getting your view on that.

Mr. MALETZ. Mr. McGaughey—

Mr. McGAUGHEY. Yes, sir.

Mr. MALETZ. Mr. Chairman, Mr. McGaughey, what provision of section I (e) does your legal counsel find objectionable from an antitrust standpoint?

Mr. McGAUGHEY. As I indicated, we feel this bill is open to a wide range of interpretation.

Mr. MALETZ. What provisions specifically?

Mr. McGAUGHEY. I (e).

Mr. MALETZ. I (e) is a very broad—

The CHAIRMAN. I do not think it is fair to ask that. That is a legal question.

Mr. McGAUGHEY. If I were an attorney, I would step up to it, Mr. Maletz, but it would be a horseback guess.

We fear this bill would produce a harmful deterrent to the growth of small retail establishments. Now, I think this is getting down to what we had in mind as to what this could be injurious to us, Mr. Celler.

Opportunities exist today for Americans with only limited working capital to enter the automobile merchandising field. It is possible to determine a dealer-applicant's credit rating and to gain an insight into his local reputation, but no effective means exist for predetermining whether a newcomer to the business will make a stronger dealer or an ineffectual dealer.

Some of our automobile merchants started on a financial shoestring and have developed through hard work and diligent effort into outstanding retailers. Others have tossed in the towel in the matter of months.

It is the latter type of individual who may be susceptible to seeking a scapegoat for his failures who would find this type of legislation an open invitation to sue the manufacturer.

To minimize the risk of litigation from some future dealer-applicant of unknown character and ability, the manufacturer might have to adopt much more stringent policies in the screening and appointment of new dealers. The acceptable candidates may be narrowed down, of necessity, strictly to businessmen of proven experience and tenure in retailing. The shortage of such qualified individuals already are a matter of concern to car manufacturers, and particularly to the small companies.

However, the factory may not be able to take the same gamble in the future with the ambitious newcomers who are anxious to break into the business or with used-car dealers who want to broaden their merchandising efforts by seeking new car franchises. Many normally good prospects may be denied the chance to become dealers because of the factory trying to guard against the opportunist with cupidity in his makeup or avoid harassment from the fringe fellow to whom a possible court judgment against the manufacturer would be an enticing and profitable way to bow in and out of the retailing business.

We greatly fear the consumers' interest will suffer with the enactment of this kind of legislation. The provision in the bill for compensatory damages is almost certain to introduce a restraining influence—and an unhealthy one—on the manufacturers' efforts to build the type of relationship which we term "cooperative quality dealer program."

As Mr. Romney pointed out to the Monroney committee, both the nature of the automobile and its marketing establish a mutuality of interests and interdependence between factory and dealer that is far greater than between manufacturers and retailers in most other business. In any specific market area, the market penetration for a car manufacturers' product is importantly determined by the service the dealers provide their customers. The substandard dealers are detrimental to other dealers as well as to the factory.

We are convinced that few dealers seek to protect other dealers who are incompetent or poorly equipped, substandard or nonperformers.

They realize that provision must be made for the replacement of such dealers or the public acceptance and sale of a car line will be adversely affected and the quality dealers themselves will be handicapped in their relations with the consuming public.

If our quantity of dealer service to the customer is to be maintained, the manufacturer must continue to evaluate the dealer's performance, and to weed out the dealer who lowers the accepted standards, or gives the business a black eye because of unethical trade practices.

The CHAIRMAN. Could you put the balance of your statement in the record?

Mr. McGAUGHEY. I would be very happy to, sir.

The CHAIRMAN. Thank you very much.

We have five other witnesses, including Mr. Hayse Tucker, chairman, National Committee of Ford, Lincoln, Mercury Dealers.

Mr. McGAUGHEY. I wonder if I could have your permission to add one other thing to the record?

I mentioned this to Senator O'Mahoney this morning, after his testimony, and he agreed that he thought it was perfectly right to mention it. And that was this:

He made mention of the fact that the smaller automobile companies, to use his words, are on the ropes. I would like to take decided exception to that as far as American Motors is concerned. We are not on the ropes. We are making substantial progress, both in the appliance business and in the automobile industry, and we feel that our situation is quite different from some of the other companies who have been in the news lately as being in difficulties.

And with your permission I would like to have that incorporated in the record.

The CHAIRMAN. Very well.

Mr. McGAUGHEY. Thank you.

The CHAIRMAN. Mr. Tucker.

STATEMENT OF HAYSE TUCKER, CHAIRMAN, NATIONAL COMMITTEE OF FORD, LINCOLN, MERCURY DEALERS, TUSCALOOSA, ALA.

Mr. TUCKER. I have a prepared statement that I would appreciate the opportunity of reading. It will take a few minutes.

The CHAIRMAN. All right.

Mr. TUCKER. Gentlemen, my name is Hayse Tucker. I am a Ford dealer at Tuscaloosa, Ala. This is my 37th year as a Ford dealer. I am the owner of the Tucker Motor Co., and I own interests in two other dealerships.

I am also the national committee chairman for the Lincoln-Mercury-Ford group of dealers considering national legislation.

We appreciate the opportunity to appear before this committee to bring not only your own views as a dealer, but we sincerely believe, the views of a great many of the dealers with whom we have had contact at various district, State, and national meetings.

This very recent contact with many dealers proved to me that, until it was called to their attention, they had given no thought to the consequences of this bill, and did not understand the serious affects the passage of the bill might have on their own dealerships.

Keep in mind, dealers are busy people, fully occupied with the operation of their own businesses. Most of them told me the bill had been represented as one simply to require fair play by the factory.

And I might say that our dealers are in favor of fair play, and against sin.

But their understanding was to require fair play by the factory in its relation to the dealers. When they became aware of the possible consequences of this bill, all of them that I have talked to felt the bill should not be passed, certainly at this session.

We appreciate this opportunity even more because the record indicates that Senate bill 3879 was presented to the Senate without hearings.

As an automobile businessman, taxpayer, and citizen, we doubt the wisdom of passage of legislation of this type without congressional hearings.

The CHAIRMAN. That is why we are having these hearings.

Mr. TUCKER. That is why we are so gratified that hearings are being held now by your committee. And we appreciate the opportunity of presenting the views of the dealers that we know.

We are here on our own initiative, and with appreciation to our own Congressman who made this appearance possible.

We know that this legislation has been sponsored by the National Automobile Dealers Association, and also State dealers' associations. We came here neither as critics nor as dissenters, but rather as a dealer who has spent a lot of his hours and days working for the welfare for the automobile dealers of this country.

I am a member of NADA, and proud to hold a membership card in what is known as the 30-Year Club—dealers who have held their franchise for 30 years or more.

We have a high regard for our national organization. And we appreciate the opportunity here in open congressional hearing to pay tribute to the sponsorship of NADA in promoting congressional hearings, and in drawing attention to the problems of the automobile dealers of America.

This has done much to bring about important and beneficial changes in the relationships between manufacturers and their dealers.

In fact, the problems that were the subject of complaint during the past 2 years are now receiving the full attention of the manufacturer in cooperation with their dealers looking to voluntary solution.

There have been serious problems in our industry as concerns bootlegging, cross-selling, unethical advertising—all of which have affected some dealers' profits and solvency. Some of these same problems are found in other industries.

It seems to us that the problems which both of these bills attempt to solve are essentially economic problems, problems of the market place.

Dealers, as businessmen, know that legislation cannot set aside the basic law of supply and demand. The law of supply and demand exacts its own penalties and awards its own premiums, and legislation cannot change that.

The automobile business is unique in many ways. It is highly competitive, and from this competition the public benefits.

The problems which have arisen and which have brought about this legislative program essentially are directed to the unique rela-

tionship between an automobile manufacturer and its dealers. It is a "family affair," because the factory and their dealers are truly a commercial family.

Every instinct tells me that law should not interfere in family matters. Any interference in this "family" relationship by law is particularly inappropriate because practically every problem that has been raised in the course of hearings is now being dealt with by the manufacturers in conferences with their dealers, and the problems, I believe, will be solved by voluntary adjustments in relationships.

Specifically, we oppose these two bills under consideration for three reasons:

1. We believe, without question, that these bills have been motivated by high purpose, but they would not, in our opinion, achieve the results desired. The objection of getting the dealers' day in court, in our opinion, would prevent the accomplishment of the very things that we dealers desire and need the most—which is a cleaning out of bootleggers, cross-sellers, unethical advertisers, and dealers who give poor service. As we see these bills, the factories would be legally deterred from accomplishing these purposes for fear of being charged in court with coercion or intimidation or with not having preserved all the equities of the dealers who engage in these practices, which are not defined in this bill.

This legislation is not so much an authorized automobile dealer's day-in-court bill, but a bootlegger's—and we say that advisedly—but a bootlegger's holiday-in-court bill. The more we have thought about it, the more it seems to us that this legislation's true support comes from those dealers who want a license and protection from the factory to engage in all of the unethical and harmful practices that have hurt our dealers so much.

I don't want to see bad practices frozen into our businesses, and it seems to me the right to sue the factory under the plea of coercion or intimidation, words whose meaning is not clear, would accomplish just this.

2. In our opinion, this legislation is a step which will open the automobile dealers to further Federal regulation of their businesses, and which may well open the door to additional Federal regulation of their businesses, and which may well open the door to additional Federal regulation of all business in our country, in all categories.

3. This is class legislation, because it imposes Federal law and regulation on one particular line of manufacturing and their selling regulations, but does not impose the same regulation on other manufacturers and their dealers.

The authorized automobile dealers of the Nation are, first of all, Americans, and then businessmen. They do not desire, nor do they ask for, class or special legislation of any kind in their behalf.

As a businessman, I think that those who fully understand this legislation realize that it has far-reaching implications, and not only concerning their business but all other businesses of the whole country.

We think that Congress has done a fine job in throwing light upon the conditions and needs of our industry. This has resulted in definite action by the factories to eliminate these problems. A few of the industry's moves toward a better and more sound dealer condition include:

1. Five-year dealer contracts, cancellable at will by the dealers, but only for cause on the part of the manufacturers;
2. A promise to eliminate bootlegging by all lawful means;
3. Millions of dollars of additional income to dealers by more favorable programs of factory reimbursements for dealer service costs;
4. Insurance and pension plan for dealers;
5. Most important of all, an admission by our factories of their knowledge of the condition that does exist today in automobile retailing and their proposal to do something about it, along sound, constructive, active lines.

In view of all the things that the industry is now doing for dealers, we feel strongly that this is not the time for dealers to upset the progress by legislation. We firmly believe that legislation of the kind under consideration by this committee will tend to discourage voluntary cooperation. It will tend to make each party look closely to his rights under the law and to think about legal problems and litigation rather than act in a friendly, trustful, and cooperative manner, one with the other, factory and dealer, line by line, family by family.

The history of our business confirms the fact that we have worked out, and thus we can expect to continue to work out, our problems, without the need of legislation. We ask that we be given a chance to do so in the light of the substantial solutions to our problems that are already being effected.

We ask that no legislation be passed unless it is abundantly clear that legislation is the only way to solve the problems of our industry.

The CHAIRMAN. I would like to ask you 1 or 2 questions, Mr. Tucker.

Mr. TUCKER. May I sit down, Mr. Chairman?

The CHAIRMAN. Yes, certainly.

This committee has received an avalanche of telegrams last week in favor of this bill, many of them from Ford dealers; and subsequently, we have had quite a number of wires from Ford dealers against the bill. In other words, we have Ford dealers for the bill and then we have them against the bill.

Now, you are chairman of the National Committee of the Ford-Mercury-Lincoln dealers; is that correct?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. How many members do you have in that committee?

Mr. TUCKER. Approximately 97 were in attendance at this meeting last Wednesday; about 105 were absent.

The CHAIRMAN. Where was that meeting?

Mr. TUCKER. Dearborn, Mich.

The CHAIRMAN. And did you receive an invitation to attend that meeting by the Ford Motor Car Co.?

Mr. TUCKER. We received a personal invitation from Mr. Henry Ford II.

The CHAIRMAN. That meeting was called by Mr. Henry Ford, rather than by the National Committee of Ford-Lincoln-Mercury dealers?

Mr. TUCKER. The organization was formed at that meeting.

The CHAIRMAN. Oh, that was the first time—

Mr. TUCKER. Yes, sir. The Senator made a mistake this morning in confusing our regular channel, the democratically elected national council for national—the legislative council. The two are unrelated.

The CHAIRMAN. So you never had a committee called the Committee on Ford-Lincoln-Mercury Dealers before—

Mr. TUCKER. On national legislation, no, sir.

The CHAIRMAN. Before June 20, when you were all invited to Dearborn?

Mr. TUCKER. That is correct.

The CHAIRMAN. At the invitation of Mr. Henry Ford II?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. That is about a week and a half ago?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. So your organization has been in existence for about a week and a half?

Mr. TUCKER. Our organization is less than a week—yes—less than a week old. Our thinking precludes that quite a bit on this subject.

The CHAIRMAN. Now, did the Ford Motor Co. appoint or designate you as chairman?

Mr. TUCKER. Yes, sir; Mr. Ernest Breech, chairman of the board, appointed me chairman of this dealer group.

The CHAIRMAN. Then there was not an election?

Mr. TUCKER. No, sir.

The CHAIRMAN. You were just appointed?

Mr. TUCKER. I have been for the past several years, an elected member of the national council which was referred to this morning—

The CHAIRMAN. Yes, but on this—

Mr. TUCKER. I am appointed, yes, sir.

The CHAIRMAN. What was the purpose of the meeting that was called?

Mr. TUCKER. To start among substantial, successful dealers, separated as to size and geographical location—the start of an intensive educational program on the implications, ramifications and possible consequences of this national legislation.

The CHAIRMAN. And do you feel that you were a free agent there, having been called by Mr. Ford as his guest and he being the host and you being appointed by the Ford Motor Co.

Mr. TUCKER. I think that I speak for the 97 men that were present, that we were free agents, substantial businessmen of character who would consider any inference that we failed to use our individual judgment as a reflection on our character.

The CHAIRMAN. Well, there is no—

Mr. TUCKER. I understand that there is no inference in your question but I mean that—we have been publicized a bit, Mr. Chairman, in our trade journals, is the reason I make that statement.

The CHAIRMAN. We have had these contradictory statements coming from Ford dealers and we have to find out a little bit.

Mr. TUCKER. Yes, sir. We will try to answer.

The CHAIRMAN. And there is no reflection upon you personally, at all.

Mr. TUCKER. I understand.

The CHAIRMAN. Now, may I ask you this. Were your expenses paid by the Ford Motor Co. to the meeting from your place of business?

Mr. TUCKER. They have not yet, but I am counting that they will be paid, yes, sir.

The CHAIRMAN. And will your expenses be paid for your trip here to Washington?

Mr. TUCKER. That has not yet been discussed. I assume they will, but I really don't know. I can imagine that my expenses will be paid by the Ford Motor Co., I have not discussed with anyone, I am not interested in that—

The CHAIRMAN. But you would take money if it were offered?

Mr. TUCKER. If it were not tainted.

The CHAIRMAN. And did you prepare the statement, yourself, that you read to us just a little while ago?

Mr. TUCKER. I am the author and take the sole responsibility for the statement, the essence, the thinking, the principles outlined are entirely my own thinking and creation.

I had professional help to make it a little smooth.

The CHAIRMAN. Was that help furnished by the Ford Motor Car Co.?

Mr. TUCKER. Yes, sir; yes, sir.

The CHAIRMAN. Would you care to name—

Mr. TUCKER. And some of the dealers. I have discussed this statement with a number of dealers. We have quite a number—

The CHAIRMAN. Was the help given by some official of the Ford Motor Car Co.?

Mr. TUCKER. Part of it, yes, sir; by our attorney, by one of our vice presidents.

The CHAIRMAN. Do you care to name the Ford assistance?

Mr. TUCKER. Who helped?

The CHAIRMAN. Yes, sir.

Mr. TUCKER. Mr. Tisdale, assistant general counsel, helped. Mr. Walter Williams, vice president, sales and advertising, helped.

The presentation was written entirely by me. We corrected it in consultation with them.

The CHAIRMAN. At this meeting, was there an open discussion as to these bills?

Mr. TUCKER. The meeting in Detroit?

The CHAIRMAN. Dearborn.

Mr. TUCKER. I mean Dearborn. Yes, sir, there was open discussion and explanation, briefly, by Mr. Ford, more detailed by Mr. Breach; in complete detail by our general counsel, Mr. William T. Gossett.

The dealers then recessed, adjourned from that meeting, and went into a consideration of the matters, themselves, and wrote there some resolutions and there was submitted in a meeting of the dealers unsupported by factory participation.

The CHAIRMAN. Were the other dealers' expenses paid by the Ford Motor Car Co.?

Mr. TUCKER. I feel sure they were, Mr. Chairman. I imagine that they all got the same telegram I did, which included expenses.

I would like to say more, in answer to that, that we would have traveled many times further at our own expense for that same purpose.

The CHAIRMAN. Did you know about this bill prior to the meeting at Dearborn?

Mr. TUCKER. You mean—

The CHAIRMAN. The O'Mahoney bill, the Celler bill, or both?

Mr. TUCKER. I first considered NADA in its participation in Federal legislation as early as 1954, when Charles Freed of Utah was national president; as early as March of this year I have had correspondence with Senator Sparkman on this specific legislation and at that time I expressed then what I felt the best solution was, a factory-dealer solution without legislation. That is in Senator Sparkman's file, away before these meetings, or consideration of the bills.

Mr. MALETZ. Were there any subsequent meetings?

Mr. TUCKER. Since that day?

Mr. MALETZ. You said there was just that one meeting. What happened after that? Were there local or regional meetings?

Mr. TUCKER. The dealers were asked to hold group, district, line by line, or all-line meetings, whatever, in their own thinking they could best explain.

The CHAIRMAN. Well, thank you, Mr. Tucker, very much.

Mr. TUCKER. Thank you.

The CHAIRMAN. Our next witness is Mr. Steward C. Holman, Ford dealer in Merchantville, N. J.

STATEMENT OF STEWARD C. HOLMAN, FORD DEALER IN MERCHANTVILLE, N. J.

Mr. HOLMAN. Mr. Chairman, I was requested by Congressman Wolverton to bring copies—do you want those at this time?

The CHAIRMAN. I have read your first paragraph. Suppose you start with your second paragraph.

Have you given your name to the stenographer?

Mr. HOLMAN. My name is Steward C. Holman of Merchantville, N. J.

The CHAIRMAN. Start out with your second paragraph. We have read the first one.

Mr. HOLMAN. I am not only against this particular piece of legislation under discussion, it is my opinion no congressional legislation is needed at the present time. I hope none ever is needed. It always seems to me original legislation does not anticipate all the ramifications of the problem it is trying to cure and results in more and more legislation. In the present situation, I think there has been over-emphasis on the automobile factories being the big bad wolf. I do not think the major part of the present automobile dealer problems is factory-dealer relations or contract improvements. The adjustments of market change is our biggest problem.

I am not here in any way to defend the Ford Motor Co. I have been an outspoken critic of many of their policies with other dealers and in dealer councils. I expect to continue to resist anything that I do not consider sound business policy for my business.

The CHAIRMAN. Mr. Holman, would you be good enough to stop and step from the stand for a while?

Mr. Tucker, I want you to identify the minutes of that meeting at Dearborn. I just hand this to you, Mr. Tucker, this pamphlet, and I ask you whether that is the printed document that was circulated at the Dearborn meeting.

Mr. TUCKER. I have checked the dealer's statement and the dealer's recommended action.

Those are the minutes of the dealer group; yes, sir.

The CHAIRMAN. Was that printed by the Ford Motor Co.

Mr. TUCKER. That was printed by the Ford Motor Co. and distributed to all 9,000 dealers of the company.

The CHAIRMAN. And the expense was paid by the Ford Motor Co.?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. Thank you. That will be accepted in the record. Go ahead. I am sorry to have interrupted.

(The minutes referred to are as follows:)

THE FACTS ON DEALER LEGISLATION PENDING BEFORE CONGRESS

EMERGENCY MEETING CONVENED ON DEALER LEGISLATION

On Wednesday, June 20, 1936, an emergency meeting of 125 representative Ford, Mercury, and Lincoln dealers and top company executives was called to discuss impending legislation affecting the relations of automobile dealers and manufacturers. Henry Ford II, president, Ford Motor Co., opened the meeting to ask for the dealers' comments on the proposed legislation. William T. Gossett, vice president and general counsel, discussed in some detail the legal aspects of certain bills, especially the Monroney and O'Mahoney bills, which have drastic implications for the future of dealers as well as manufacturers. Ernest R. Breech, chairman of the board, summarized the concern of the company that the proposed legislation, if passed, would disrupt and perhaps destroy the whole authorized dealer system of automotive distribution.

The assembled dealers expressed grave concern over widespread misconceptions of the bills and their implications, and urged that a summary of the information offered at the special meeting be made available to all dealers of Ford Motor Co.

This summary has been prepared in compliance with their request. Because of the urgency of the problem, it was felt necessary to cover here in some detail the legal implications of the two bills in order to make their flaws completely evident.

At the conclusion of the general discussion, a meeting of the dealers, under the chairmanship of Hayse Tucker, of Tuscaloosa, Ala., adopted the following resolution and seven-point program of action:

DEALERS' STATEMENT

Small and large automobile dealers from all sections of the country have today concluded a meeting at which all aspects of the Monroney and O'Mahoney bills, now before the Congress, have been fully and openly discussed.

We have reached the following conclusions:

(1) If the O'Mahoney bill becomes a law, the automobile bootlegger will be able to thrive and prosper, to our detriment, as never before. This is because, under the provisions of the bill, no one will be able to take any effective action against bootlegging and other unethical practices.

(2) If the Monroney bill becomes a law, the Government, through the Federal Trade Commission, will be required to enter into every phase of our business—including contract provisions, prices and profit margins—and the days of NRA and OPA will look like paradise by comparison. We are therefore against the passage of this bill.

(3) If either or both of these bills become law, the manufacturers may well be forced to seek entirely new methods of distributing, selling, and servicing the cars and trucks they make, methods that could seriously affect not only our future profits but the very existence of authorized dealerships. For this very important reason, we are against each of these bills.

(4) Our final conclusion is that the combined provisions of these bills fail completely to meet the objectives of those who, several months ago, set out in all sincerity to cure certain recognized evils and abuses in our business. The O'Mahoney and the Monroney bills—in their present form—may well kill the patient instead of curing him.

For these basic reasons, we hope that no bills concerning automobile factory-dealer relationships will be passed at this session of Congress. We are communicating to our Senators and Congressmen these conclusions. We urge, in the interests of the successful future of all of us, that all dealers will do the same, and as quickly as possible.

DEALERS' ACTION PROGRAM

Also adopted unanimously was the following seven-point program of action:

- (1) Every member to be furnished a copy of the resolution in order to study its import and consequences.
- (2) Every member to take the individual responsibility of sending to his Congressman and Senator a telegram of his position on both bills, individually signed, individually worded, and sent from his home address.
- (3) Every member to head a campaign of individually written letters on his own letterhead, individually signed, to whatever group or groups that appears logical.
- (4) Each member to get the cooperation of competitive dealers in a similar program.
- (5) Each member to promote local, county, and district meetings of groups which have not been advised of the real portent of these bills—to educate and seek favorable action.
- (6) Each member present to write an individual letter to the Congressmen from his State on the House Committees on Foreign and Domestic Commerce, Rules, etc., and the comparable Committees of the Senate.
- (7) Each member to volunteer to testify, and to contact his own Congressman or Senator to this end.

SUMMARY OF STATEMENT BY WILLIAM T. GOSSETT, VICE PRESIDENT AND GENERAL COUNSEL OF FORD MOTOR CO.

I am glad of the opportunity to speak to this representative group of Ford Motor Co. dealers because we are seriously concerned about this legislative situation. We are concerned not in any selfish, narrow way. We believe our interests are identical with those of our dealers in this matter. We believe that the proposed legislation, though it will be bad for everybody, will be most seriously damaging to the dealers.

We believe, not only that a good many dealers have failed to analyze the proposed legislation and its implications, but that the same can be said for many Members of Congress. Though we are trying hard to correct that situation, we have had to work on short notice. Without any real warning we were presented only a few days ago with two bills, the Monroney and the O'Mahoney bills. In the case of the O'Mahoney bill, there have been no hearings at all.

In order to understand the serious implications of these bills for you and for us, you don't have to be lawyers. But you do have to examine the language of the bills carefully before their fallacies become obvious.

Let's look at these bills on their merits. I'll just mention the more obvious snags. If you have any questions whatever, please raise them as I go along.

First, take the Monroney bill. The bill is short, but it isn't by any means simple. As we proceed, you will see how it throws up one roadblock after another in the path of an effective, workable manufacturer-dealer relationship—often purely inadvertently, I'm sure—but nevertheless, roadblocks which make the bill almost impossible for the manufacturer or the dealer to live with.

One section of the bill makes it illegal under the FTC Act for a manufacturer to induce any of its dealers to order or accept for delivery any product "by means of coercion, intimidation, or discrimination."

Surely nobody could be in favor of such methods. Ford Motor Co. certainly has no objection in principle to that language. Our problem is: What does it mean? We think in one sense it is superfluous; it expresses the law pretty much as it exists today.

On the other hand, the failure to define the terms "coercion", "intimidation" and so on means that we might be subject to legal reprisal for such normal activities as insisting that dealers maintain sufficient stocks to provide adequate representation and service. We could not under this language even require a dealer to "accept for delivery" products he had actually ordered. If the manufacturer could no longer insist on such elementary principles of good business, the value to him of the existing authorized dealership system would be weakened.

Another section, the so-called antibootlegging section, has two main provisions.

First, it would make it illegal for a dealer knowingly to sell a new car for resale as a new car in competition with a dealer of the same make, without first giving his manufacturer a chance to buy back the automobile "at the price paid therefor."

Second, it would make it illegal for the manufacturer to refuse to buy back that car under an agreed plan, which I will tell you about in a minute.

This section, in whole or in its separate parts, is worse than unworkable.

It would not do what it sets out to do. It obviously would not stop bootlegging, and I have yet to talk to any dealer who believes it would. Here's why.

First of all, to make it effective you would have to prove, in each case of suspected bootlegging, that the dealer knowingly sold it for resale as a new vehicle. Not only would that be almost impossible to prove, but as most of us know, most of these bootleg cars are sold not as new cars, but as used cars.

Presumably, the incentive of the bill not to bootleg is the provision that the dealer has a right and obligation to resell the car to the manufacturer "at the price paid therefor." But the language does not define, and Senator Monroney himself failed to define for me, what that price includes—whether it includes the destination and delivery charges, for example. If it doesn't, the question is whether this legislation would lead a potential bootlegger to return the car to the manufacturer and get back what he paid, less freight and other charges. Would he take that loss, or would he prefer to take a quick profit in the bootleg market?

Certainly the bill contains no strong sanction. The only penalty of the statute would be that an erring dealer would be cited by the Federal Trade Commission. He would undergo a lot of hearings and, if found guilty, he would be served with a cease and desist order probably months after the event. He would be told not to do it any more. That is not much of a penalty.

The major premise of the section is that the sole cause of bootlegging today is the pressure of the car manufacturer. If that is not the case, and we know it is not, the measure does not correct bootlegging. If it is the case, then the problem is satisfactorily dealt with by that earlier section which says you cannot coerce or discriminate against a dealer.

Next let's look at the second part of this section—the repurchase provision. This would make it illegal for a manufacturer not to buy back cars offered to him by dealers at that ambiguous "price paid therefor" and under the terms of a "plan adopted by such manufacturer which is equitable to all dealers and consistent with the financial resources of such manufacturer."

Under this provision, the manufacturer would be obligated to take back cars without prior notice, in unknown quantities, at unpredictable times—an entirely intolerable situation from his standpoint.

The manufacturer would have nothing to do with the selling of the cars. If a profit were to be made, the dealer would make it. If there were a loss to be taken, the factory would take it. Obviously, if we had to assume that kind of risk, without any influence over the selling, our whole system of distribution would be jeopardized. We would have to take a very long look at it. Both the short- and long-term consequences of that provision would be thoroughly unhappy for us and for the dealers.

Suppose, for example, that a situation arose in which we would have to take back 70, 80, or even a hundred thousand cars. What would we do with those cars? We couldn't eat them. We couldn't scrap them. Obviously, we would first try to sell them through our dealers—the ones who had not turned back cars to us. Certainly they would be justified in refusing to take those cars, and certainly we would not be able to put any pressure on them.

So we would have to turn to other means—perhaps sell them to used car dealers at reduced prices. The effect of that would be worse than bootlegging. We would have to get rid of the cars in large quantities and perhaps at a time and place when it would most be disadvantageous to some of our dealers.

Mr. Breech is going to discuss with you some of the possible consequences of the transfer of business risk inherent in this part of the proposed legislation. We are also going to place before you comments by various Government agencies and by an impartial, outstanding business economist concerning the potentially grave consequences of this section. So I will pass that for the present.

There is another aspect to this legislation, however, that concerns us all. It will inevitably plunge our industry, both the manufacturers and dealers, into direct peacetime governmental control and regulation without any parallel or precedent in the history of manufacturing industries. The Federal Trade Commission itself, which would be the main instrument of the proposed extensive regulation, stressed that fact in its communication opposing the Monroney bill. (See excerpts.)

For example, in order to pass upon the repurchase plan required by the law, to assure that it is "equitable to all dealers" and consistent with the financial resources of the manufacturers, the FTC would have to become deeply involved in the financial situations of the dealers and the manufacturers.

...and the manufacturer to require dealers to maintain certain records and to make certain reports. The manufacturer works out a system of compensating its dealers—not for the actual work they do, but for the advertising expenses and facilities required to furnish such services and render such service.

These are not matters disputed, but managers don't know much about the automobile business.

Suppose a dealer, under this regulation, the Federal Trade Commission would require that he get a good price for his car for compensating dealers for maintaining the journal and for this, as soon as he would not mind of this, they would ask the FTC. They would ask it to pass on the proper rates of dealers. They would not take a piece in the dealer's profit margins. The FTC is going to make sure the dealers are charging too much and making too much money. They would not be able to get around to the FTC, all of these subjects would be taken care of. A determination of what would be a reasonable system for compensating the dealers and as through this second year the FTC would set even higher rates for the dealer's operations of the dealerships, as well as of the manufacturer.

There is no doubt that the dealers who complained most about emergency regulation, such as 15A and 15B, are the same ones who are now shortsightedly seeking legislation to adjust all the problems between the dealer and the factory.

Another inherent feature of this bill is that it would lead to endless litigation and uncertainty in the manufacturer-dealer relationship.

Another provision of the bill would make it illegal for the manufacturer, without the consent of the dealer, to cancel the franchise unless (a) the contract contains explicit standards of the dealer's duties and obligations and (b) the dealer has failed to perform one or more of them in a reasonable manner.

The immediate effect of this would be to force the manufacturer to try to draw up a highly detailed contract of short duration. In order to protect ourselves, we would have to submit the contract to the Federal Trade Commission for approval. We would be engaged and the dealers would be engaged in building up a second and instead of worrying about the important things, we all would be worrying about the technical procedures that might have to be brought before the Federal Trade Commission.

Assume we could wind up with several forms of contracts because the situation would vary in various areas. The whole procedure would give rise to constant controversy, to charges and countercharges and to endless litigation.

Still another provision of the bill would make it illegal for a manufacturer to cancel or fail to renew the dealer franchise without agreeing to bring about an equitable liquidation of the assets of the dealership.

As you know, we now have very specific provisions in our contract concerning liquidation of the assets of a terminated dealer. But the vague language of this provision is a matter of concern. As we interpret it, it would require the manufacturer to arrange for the equitable liquidation of assets even of a dealer terminated by reason of an illegal act, of fraud, or bankruptcy. Moreover, it would require liquidation of all assets whether or not they were really needed to conduct the dealer's business.

So far as the dealer is concerned, the rub is clear. If the manufacturer must help the dealer liquidate without regard to whether his assets are good or bad, obviously the manufacturers must have a say in the dealer's purchase of assets and have some power of veto which they don't have now. Thus the dealer would tend to become less rather than more independent.

Once again, in working out the terms of equitable liquidation, we would find the Federal Trade Commission involved in our business.

I think the result of all this legislation is perfectly manifest to anyone who thinks it through. It will bring the Federal Government deep into the day-to-day operations of our industry. Do the dealers really want this?

I think it is clear to all of us at Ford Motor Co. that we have not given sufficient attention to working out some of the dealers' problems. But that situation is now being corrected, and corrected fast. The question now is whether we shut down the long, dusty road of Government regulation. Without exception, every industry that has done so has regretted it: The railroads, the public utilities, the power industry. And the effect of legislative regulation has always been that the parties do only what they are required by law to do. They go just—and only—as far as they have to go in fixing up their differences under legislation. They rely upon Government agencies to do the rest.

It seems to me that in this industry, above all others, our interests are mutual. We want you to be strong. We are concerned with your strength and well-being as you are with ours. Before we resort to such drastic regulation as is suggested by this legislation, we ought to do our level best to put our own house in order. When an industry once gets into the hands of the politicians, they never let it go.

And I am certain that what they will do in the guise of protecting the public interest ultimately will do more damage and put a greater burden on the dealers than on the manufacturers.

Have you ever stopped to think, for example, that if the dealers should get a special benefit in the form of Federal legislation and regulation by Government bodies, they would be more likely to be held subject to the rules and regulations of other Federal legislation, the application of which to the dealer is of doubtful validity today? I am sure there are those who would press that case with a great deal of force, and I don't think the consequences would be palatable.

When I was down before Senator Monroney, he said, "Well, you are just worrying about a bunch of hobgoblins that are never going to happen." But the answer to that is that the Departments of Justice, and of Commerce, and the Federal Trade Commission have all expressed the same kind of concern about the proposed legislation that I have expressed here today. (See excerpts.)

Now just a very brief word about the O'Mahoney bill. This bill, as recently amended on the Senate floor, provides that the dealer may bring suit against a manufacturer in Federal courts and may receive compensatory damages sustained by him by reason of the failure of the factory to act in good faith in complying with the terms of the franchise, or in terminating, canceling or not renewing the franchise. The manufacturer would not be barred from asserting in defense the failure of the dealer to act in good faith.

While once again, this sounds just like being on the side of the angels, the ambiguity of this bill would tend greatly to increase litigation and a litigious outlook in our whole relationship. From the standpoint of the dealers, it would have the equally serious consequence of protecting unscrupulous dealers in engaging in bootlegging and other unethical practices. But the language goes even further; it would seem to require the manufacturer to guarantee the dealer against coercion and intimidation from any source.

It seems to me, gentlemen, that nothing that has been offered in the Congress thus far in the way of laws will be half as acceptable to you and us as the kind of settlements we can work out in the good, traditional private enterprise way—inside the family.

But however that may be, it is perfectly clear that the foreseeable consequences of the proposed legislation that I have discussed are so serious that it should be opposed, not only by the manufacturers, but by every dealer.

OUTLINE OF REMARKS BY ERNEST R. BREECH, CHAIRMAN OF THE BOARD,
FORD MOTOR CO.

I hope you listened carefully to Mr. Gossett's remarks. He has not exaggerated in the slightest the possible effects of the proposed legislation.

The Ford Motor Co. has great confidence in the present industry system of distribution through authorized dealers. It has always worked well and, we hope, always will—to the benefit of the dealers and ourselves.

We will maintain our established authorized dealer system as long as we can do so. We are going to do our best to make the system work under any present or future legislation.

We owe to you, as well as ourselves, the utmost candor and sincerity in stating the problems as we see them.

Our business is a high volume, low cost business. If the volume is reduced, prices must increase, thus further reducing volume.

Our study of the proposed legislation has led us to the considered opinion that the legislation could have the effect of reducing volume and increasing prices. Indeed, we do not see how that result could be avoided on a short-term basis.

Obviously, if the proposed legislation is passed and becomes effective, we must take such steps as we think are necessary to maintain reasonably high volume and low prices.

If this result can be attained under the present authorized dealer system, that is the way we will move.

We are convinced, however, that if the legislation were passed, important changes in our present system of distribution will have to be made.

We will have to spell out in specific detail in our contracts all of the obligations and rights of the parties. For example, it might be necessary to specify the exact number of cars and the value of the service parts and accessories which the dealer would be obligated to purchase.

In the interest of both parties, the contracts would be of short duration—not more than 1 year.

Obviously, if we are to assume the risks of the dealers' inventories, as is provided in the Monroney bill, we could not justify the present price structure; it would have to be adjusted in accordance with the new distribution of risks imposed by the statute.

If we are compelled to repurchase cars from dealers, and other dealers are unwilling to merchandise them, we will have to sell them in competition with our dealers.

If we are to be required to compensate dealers for maintaining warranty and service facilities and personnel without reference to their performance of warranty and service obligations, we might be compelled to set up service facilities of our own, in the large metropolitan areas at least. We are also considering alternative moves, such as changing our entire pricing and discount structure on service parts.

In smaller cities we might be forced to authorize others besides authorized dealers to perform warranty and service work.

If we are to assume broad responsibility in connection with the liquidation of any dealer terminated, we would have to exercise close control over the purchase of assets by a dealer. This would be provided in our new contract.

If we are to be allowed to exert no effective influence concerning the sales of dealers, we obviously may be required to add a larger number of dealers and various kinds of dealers in order to maintain the volume of our production and keep prices down.

The ultimate effect of such adjustments as we can envisage would be to change the character of the distribution of automobiles in this country. It would not have the effect of increasing the independence and importance of our dealers, but would more likely have the opposite effect.

It would reduce their margin of profits, certainly if the matter were left to the Federal Trade Commission.

It would jeopardize their service and parts business.

It would cause strife and litigation in the industry and instead of bringing the parties closer together in cooperative effort it would tend to create friction and controversy between them.

Any relationship that depends upon legal provisions and Government regulation for its health and welfare will in the long run fail.

I hope that you will not interpret anything I have said as a threat. I said at the outset that we owed to each other the utmost candor and sincerity. I simply have been trying to think out loud and tell you what might be the results of the kind of legislation that has been proposed.

Naturally, I hope that this legislation will not pass. As I have said before, if it does pass, we will do our best to live under it, but what I have described is our best appraisal of some possible results of the legislation.

EXCERPTS FROM STATEMENTS ON THE PROPOSED BILLS

Communication from the Chairman of the Federal Trade Commission to Senator Warren G. Magnuson of the United States Senate Committee on Interstate and Foreign Commerce on the Monroney bill (S. 3946) :

" * * * The present proposal appears to be directed toward singling out a particular group of distributors, not unlike other groups of distributors who also operate under franchise arrangements with manufacturers, and conferring upon them rather unusual privileges presumably for the purpose of correcting abuses. It may be an open question whether, if such legislation should be enacted, it would have the result anticipated or, on the contrary, bring about or hasten radical changes in distribution of automobiles.

"Our basic objection to the proposal, however, is that it would put the Government into actively supervising and, in a measure, controlling, and regulating the business relations between private parties, business relations which have no more bearing upon the public interest as a whole than the business relations between any other private parties. It would require this agency to inquire publicly and

in detail into the financial resources of manufacturers; into the nature, extent, and cost of personnel and facilities of dealers; and to supervise the adequacy of contractual provisions between manufacturers and dealers and concern itself with the liquidation of assets of dealerships. It thus interferes with many aspects of normal business relations between private parties and in the process of so doing curtails several basic rights, such as the right of a seller to select his customers, and to the extent that it might become operative, tends to freeze a particular system of marketing rather than leaving the flexibility which the market place requires.

"For he reasons stated the Federal Trade Commission recommends that the bill be not enacted."

Communication of the Secretary of Commerce to Senator Magnuson on the Monroney bill:

"* * * In effect, this proposed legislation would put the Federal Trade Commission in the position of closely regulating virtually all aspects of dealer relationships in the automotive industry. It would put into effect a broad scope of Government regulatory control of automotive marketing that has never been undertaken in any other competitive industry or any phase of product distribution in our entire economy. Although the objective of this legislation is the elimination of a number of problems which have developed in the past in connection with automotive marketing, the effect would be the creation of many new and unforeseen problems rather than correction of old problems.

"It is true that there have been frequent complaints from automotive dealers as to some aspects of their dealership contracts and there is no doubt that some of these complaints have been justified. It should be noted, however, that the automotive industry has itself moved rapidly to improve the situation and to eliminate the grounds for dealer complaints. Automotive manufacturers have in recent months established dealer councils to help solve the problems which arise between manufacturers and dealers. They have offered dealers long-term sales agreements and have established equitable procedures for handling of cases involving termination of dealer contracts. In addition, arrangements have been made for reimbursement of dealers for services performed on warranty work. These steps have gone a long way toward meeting the problems that have been previously raised and because of this there is, in our opinion, no need at this time for Federal regulation of the type proposed in S. 3946. We are confident that the automotive industry itself can most effectively work out its own internal problems in a cooperative spirit without Federal regulation.

"In view of the importance of the automotive industry in our economy and the dependence of so many other industries upon this industry, extreme care must be taken to avoid any type of action which might inhibit the continued vigorous growth of the industry or which might upset the economic balances which exist within the industry. Federal regulation is at best a poor substitute for free economic activity and should be invoked only in situations where there is present a problem of such dimensions that Federal action is necessary and no other alternatives are available or all other measures have failed. Certainly this is not true with respect to the marketing and distribution of automobiles. The problems which have been presented there are now being worked out by the industry itself and we are confident that a proper and equitable solution will be reached on all of these problems.

"We, therefore, urge that action on the proposed legislation be deferred so as to give the industry adequate time to deal with its own problems. If at some time in the future it may appear that these problems have not been properly taken care of further consideration may at that time be given to corrective legislation."

Comments by Joel Dean, independent economist, marketing specialist, and professor of business economics of the Columbia University Graduate School of Business on the Monroney bill:

"* * * These short-run effects would eventually impel automobile manufacturers to search for other and more efficient ways to market their cars competitively. These might include:

"1. Increasing the number of retail car dealers and stripping them of some of their functions with a resulting narrower retail profit margin and a decline in the value of the dealer franchise.

"2. Separation of the retail functions of sales and service.

"3. Entry of the manufacturers directly into retail selling, servicing, or both.

"If the number of dealers were increased and their functions cut down, there would probably be greater instability in the dealer population in the long run. If dealers were more numerous, less protected geographically, and with fewer sources of continuing revenue, individual dealers would be less substantial than at present and their number would be more responsible to fluctuations in the demand for new cars. It would be easier both to get into the business and to get out. * * *

"* * * In conclusion, this bill raises some broad questions which I am sure the committee will want to consider:

"1. The bill will inject the Federal Trade Commission into the day-to-day decisions of automobile marketing, and will cause inefficiency, uncertainty, and litigation.

"2. The bill runs counter to antimonopoly legislation. It would lessen competition by removing the sales push of the manufacturer and by supporting the desires of some dealers for smaller volume at higher prices. Hence it would injure the consumer and be an obstacle to economic progress.

"3. If enacted, this bill would set a sweeping precedent, as both Senator Monroney and Senator Bennett have pointed out. Other industries, particularly durable goods, have similar marketing problems. It would be hard to deny dealers of farm equipment, major appliances, and other products the same treatment which this bill gives to automobile dealers.

"4. The bill is likely to prove ineffectual in the long run in obtaining for the dealers the benefits they seek. The bill would either prove to have loopholes which would in effect nullify it, or it would be so effective in the short run that manufacturers would in the long run be forced to modify basically the structure of automobile retailing."

Communication from William P. Rogers, Deputy Attorney General of the United States, to Senator Joseph C. O'Mahoney, chairman, Subcommittee on Antitrust and Monopoly of the United States Senate, concerning the O'Mahoney bill (S. 3879):

"This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule we continue to oppose special legislation applying to any one industry.

"Beyond that, comment on the bill's extremely broad wording is complicated by the absence of that public discussion and analysis which hearings would likely evoke. Principal questions stem from the consideration of section 1 (e)'s definition of 'good faith.'

"Initially, the manufacturer is obliged, upon pain of double damages, to 'guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation * * *.' While we are opposed to the coercion of any dealers, including automobile dealers, to accept products for resale, this practice may be at present an unfair method of competition under the Federal Trade Commission Act. * * *

"For all these reasons, I am unable to recommend enactment of this bill."

Mr. HOLMAN. I am not here in any way to defend the Ford Motor Co. I have been an outspoken critic of many of their policies with other dealers and in dealer councils. I expect to continue to resist anything that I do not consider sound business policy for my business.

The CHAIRMAN. Were you present at the Dearborn meeting?

Mr. HOLMAN. Yes, sir; I was.

I might state at this time that I would not want to be construed in any way, that the Ford Motor Co. could in any way brainwash me or affect my opinion about this legislation.

I have correspondence here with Congressman Wolverton which states my position. Congressman Wolverton wrote me on March 3, with reference to the—well, this legislation, with reference to the Monroney legislation on May 3, and we replied to it on that date, stating our position to Congressman Wolverton, and what I have written here myself is myself, and I did not have any help from Ford Motor Co. counsel or anybody else.

Congressman Wolverton has known me for 30 years, and on automobile legislation in the Congress he has always written me for our opinion. He wrote me on this Monroney legislation which is in the general area of what we are talking about.

He wrote me on March 3, and we expressed our opinion at that time and when this thing came up I was invited to Detroit.

I went out there. I don't know whether they are going to pay my expenses or not. It is in the telegram—it is not important.

But, regardless of any of the discussions out there, Mr. Celler, I have been on record with my position in this thing, and I have expressed my viewpoint to Congressman Wolverton principally and substantially the same as I am reading now.

The CHAIRMAN. At this meeting which you attended at Dearborn, were you asked to testify before this committee or the committee in the Senate against either of these bills? Was it suggested to you that you testify against these bills?

Mr. HOLMAN. In principle—I would not word it just exactly that way. The sense of the resolution passed would be that we would stand up and be counted if this was our opinion.

The CHAIRMAN. Were you asked to send wires and letters to Members of Congress expressing your views?

Mr. HOLMAN. The way it worked out, they appointed this committee, and the committee made a recommendation of seven items, which I believe included that activity.

The CHAIRMAN. Go ahead.

Mr. HOLMAN. I do not think there has been proper consideration given by NADA or congressional hearings of the genuine effort our factory has made to help dealers operate profitably. There is no question the profits in my business have been immeasurably improved by the help and counsel of factory personnel.

I think a large percentage of the dealers would agree that this is correct. Along the way, they pulled some first-class boners, but I believe their efforts have always been on the side of trying to be helpful.

I have been in the business 32 years; I think I know the personalities of the people who are forming the policy of the Ford Motor Co. I believe they are sincere, honest people; I have confidence in their judgment, that they are in the process of making such necessary contract improvements that seem desirable. I have no fear of what any factory can do to me. I don't owe them anything, and they don't owe me anything, and I operate on that basis.

I believe this is a risk and problem business, and that adequate profit opportunities are in relation to the risk and problems involved. I am concerned if you legislate less risk in this business, the profit opportunities may be proportionately reduced.

I am very much concerned that this specific legislation under consideration might increase some of our problems rather than reduce our problems. I would think it would be more of a problem to control the bootlegging of automobiles.

I would think it would be more of a problem to generally deal with the undesirable elements that get into our business. It would be a bad business for me and my family—and most of my family are in it with me—if our factories could not deal effectively with the shoddiness in the business.

That is the general area in which I am concerned, and this is not in my notes, but from the general discussions around here, we have an awful lot of shoddiness in our business, and there is no other way of dealing with it, but, you might say, the authority or the discipline of the factory and if you go too far in that direction, I am afraid that you are going to make it possible for some pretty shoddy elements in our business to perpetuate themselves, or highjack the factory, or bring down the standard of our business, which sometimes has not been all I would like it to be.

I will hurry along with this statement, Mr. Celler.

These statements might seem inconsistent with my membership in NADA. I don't think so. I don't think Congressmen agree with all the activities of all the programs of their party chairman. NADA has done a wonderful job in promoting hearings which have brought out some of the things which need refinement in factory and dealer relations.

I do not think the average dealer is sufficiently well informed to specifically state that he wants this legislation or any other legislation.

In a recent meeting of approximately 90 Philadelphia and south Jersey automobile dealers, I asked for an expression of how many considered themselves familiar with any of the proposed legislation.

Less than 20 percent raised their hands.

Until such time as a great majority of automobile dealers would seem to be familiar with specific legislation and want it, I do not think any legislation should be passed.

As I said before, I have no problems with the factory that I do not think I can handle myself.

And I am concerned that the problem of policing this business cannot be handled effectively by legislation and—as I say, the factory, they are our only source of cleaning up some of the things that we are trying to get rid of, and I think you have, through your hearings, you have accomplished the improvements in our contractual relations that we—they are all in the process of being desirable.

I appreciate very much being heard.

The CHAIRMAN. Thank you, sir.

I have from Congressman Howard Baker a request to place in the record a statement from Mr. F. D. Eagleton, Ford dealer in Maryville, Tenn.

(The statement referred to follows:)

STATEMENT OF F. D. EAGLETON, FORD DEALER, MARYVILLE, TENN.

My name is F. D. Eagleton. I have been a Ford dealer in Maryville, Tenn., since 1944, operating as Costner & Eagleton Motors, a partnership. In my years as a Ford dealer, I have never been coerced or intimidated in any way, but I feel that better factory-dealer relations are necessary to the progress and benefit of our business. This, by necessity, is a hard-selling business. When that is eliminated, the business itself will be hurt.

I firmly believe that the manufacturers are well cognizant of the fact of the importance of its dealers and are taking and will take steps for better relationships. Therefore I am opposed to any and all legislation toward this end, as I believe it can be better accomplished by mutually agreeing and working out our differences.

Toward this end, the Ford Motor Co. has already set up its dealer policy board and new contracts are in the process of being made for the dealer organization.

In the last week I have talked to approximately 100 dealers (mainly Ford, but of all makes). Almost three-fourths of these dealers have assured me that they

are definitely against any form of legislation pertaining to the automobile business. If this proposed legislation should pass, it would make it almost impossible for a manufacturer to rid itself of a bad dealer who not only is hurting other dealers in his community but the reputation of the product which he is selling. Once we have started the way of legislation, there seems to be no end to it, but it tends to grow from year to year.

The CHAIRMAN. Now, will Messrs. Tuttle and Matthews and Danner come forward?

Now, will you just sit down a minute there, all together? I am trying to expedite the consideration of these bills.

Where is the other gentleman? Mr. Tucker, Mr. Danner, Mr. Matthews and Mr. Tuttle.

Gentlemen, I am trying to expedite the situation. It is now a quarter after 5, and we have been here since 10 o'clock this morning with one interruption on the floor of the House.

Now, you all have statements, I take it?

Mr. TUTTLE. Yes.

Mr. MATTHEWS. Yes.

Mr. DANNER. Yes.

Mr. TUCKER. Yes.

The CHAIRMAN. I would like you to place those statements in the record.

Now, is there anything additional to what we have heard expressed in these previous statements, or would you care briefly to indicate something beyond what we have heard here, rather than repeating what we have heard?

Mr. TUTTLE. Yes, sir; I have a——

The CHAIRMAN. What is your name, sir?

Mr. TUTTLE. Holmes Tuttle, from Los Angeles, Calif.

STATEMENT OF HOLMES TUTTLE, LOS ANGELES, CALIF.

Mr. TUTTLE. I have a statement here that I would like to submit for the record. I would like to make one statement, Mr. Chairman.

In regard to this meeting, at the outset, I would like to tell you that I was at this meeting at Dearborn. But I would like to correct the implication that this was strictly a factory meeting. After the implications of the bill were given to us, the meeting was immediately adjourned, and from there on out it became a dealers' meeting, and any recommendations that were made were made by the dealers.

Now, I have some further evidence here that I would like to present from the meeting that was held in southern California. The fault that I find, and many of my fellow dealers—and I represent here a meeting of 100 individual dealers——

The CHAIRMAN. You represent 100 dealers?

Mr. TUTTLE. A little over 100; yes, sir.

The CHAIRMAN. Did you call them together?

Mr. TUTTLE. Not myself; no sir. I was assisted by four or five fellow dealers.

The CHAIRMAN. Where are these dealers?

Mr. TUTTLE. In Los Angeles County and Orange County.

The CHAIRMAN. Did they meet anywhere under your auspices?

Mr. TUTTLE. No; not under my auspices alone, but under the auspices of about 5 or 6 Ford dealers, who after we got home, got to discussing this bill, and I called the local association. We could not get

The CHAIRMAN. So you never had a committee called the Committee on Ford-Lincoln-Mercury Dealers before——

Mr. TUCKER. On national legislation, no, sir.

The CHAIRMAN. Before June 20, when you were all invited to Dearborn?

Mr. TUCKER. That is correct.

The CHAIRMAN. At the invitation of Mr. Henry Ford II?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. That is about a week and a half ago?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. So your organization has been in existence for about a week and a half?

Mr. TUCKER. Our organization is less than a week—yes—less than a week old. Our thinking precludes that quite a bit on this subject.

The CHAIRMAN. Now, did the Ford Motor Co. appoint or designate you as chairman?

Mr. TUCKER. Yes, sir; Mr. Ernest Breech, chairman of the board, appointed me chairman of this dealer group.

The CHAIRMAN. Then there was not an election?

Mr. TUCKER. No, sir.

The CHAIRMAN. You were just appointed?

Mr. TUCKER. I have been for the past several years, an elected member of the national council which was referred to this morning——

The CHAIRMAN. Yes, but on this——

Mr. TUCKER. I am appointed, yes, sir.

The CHAIRMAN. What was the purpose of the meeting that was called?

Mr. TUCKER. To start among substantial, successful dealers, separated as to size and geographical location—the start of an intensive educational program on the implications, ramifications and possible consequences of this national legislation.

The CHAIRMAN. And do you feel that you were a free agent there, having been called by Mr. Ford as his guest and he being the host and you being appointed by the Ford Motor Co.

Mr. TUCKER. I think that I speak for the 97 men that were present, that we were free agents, substantial businessmen of character who would consider any inference that we failed to use our individual judgment as a reflection on our character.

The CHAIRMAN. Well, there is no——

Mr. TUCKER. I understand that there is no inference in your question but I mean that—we have been publicized a bit, Mr. Chairman, in our trade journals, is the reason I make that statement.

The CHAIRMAN. We have had these contradictory statements coming from Ford dealers and we have to find out a little bit.

Mr. TUCKER. Yes, sir. We will try to answer.

The CHAIRMAN. And there is no reflection upon you personally, at all.

Mr. TUCKER. I understand.

The CHAIRMAN. Now, may I ask you this. Were your expenses paid by the Ford Motor Co. to the meeting from your place of business?

Mr. TUCKER. They have not yet, but I am counting that they will be paid, yes, sir.

The CHAIRMAN. And will your expenses be paid for your trip here to Washington?

Mr. TUCKER. That has not yet been discussed. I assume they will, but I really don't know. I can imagine that my expenses will be paid by the Ford Motor Co., I have not discussed with anyone, I am not interested in that—

The CHAIRMAN. But you would take money if it were offered?

Mr. TUCKER. If it were not tainted.

The CHAIRMAN. And did you prepare the statement, yourself, that you read to us just a little while ago?

Mr. TUCKER. I am the author and take the sole responsibility for the statement, the essence, the thinking, the principles outlined are entirely my own thinking and creation.

I had professional help to make it a little smooth.

The CHAIRMAN. Was that help furnished by the Ford Motor Car Co.?

Mr. TUCKER. Yes, sir; yes, sir.

The CHAIRMAN. Would you care to name—

Mr. TUCKER. And some of the dealers. I have discussed this statement with a number of dealers. We have quite a number—

The CHAIRMAN. Was the help given by some official of the Ford Motor Car Co.?

Mr. TUCKER. Part of it, yes, sir; by our attorney, by one of our vice presidents.

The CHAIRMAN. Do you care to name the Ford assistance?

Mr. TUCKER. Who helped?

The CHAIRMAN. Yes, sir.

Mr. TUCKER. Mr. Tisdale, assistant general counsel, helped. Mr. Walter Williams, vice president, sales and advertising, helped.

The presentation was written entirely by me. We corrected it in consultation with them.

The CHAIRMAN. At this meeting, was there an open discussion as to these bills?

Mr. TUCKER. The meeting in Detroit?

The CHAIRMAN. Dearborn.

Mr. TUCKER. I mean Dearborn. Yes, sir, there was open discussion and explanation, briefly, by Mr. Ford, more detailed by Mr. Breach; in complete detail by our general counsel, Mr. William T. Gossett.

The dealers then recessed, adjourned from that meeting, and went into a consideration of the matters, themselves, and wrote there some resolutions and there was submitted in a meeting of the dealers unsupported by factory participation.

The CHAIRMAN. Were the other dealers' expenses paid by the Ford Motor Car Co.?

Mr. TUCKER. I feel sure they were, Mr. Chairman. I imagine that they all got the same telegram I did, which included expenses.

I would like to say more, in answer to that, that we would have traveled many times further at our own expense for that same purpose.

The CHAIRMAN. Did you know about this bill prior to the meeting at Dearborn?

Mr. TUCKER. You mean—

The CHAIRMAN. The O'Mahoney bill, the Celler bill, or both?

Mr. TUCKER. I first considered NADA in its participation in Federal legislation as early as 1954, when Charles Freed of Utah was national president; as early as March of this year I have had correspondence with Senator Sparkman on this specific legislation and at that time I expressed then what I felt the best solution was, a factory-dealer solution without legislation. That is in Senator Sparkman's file, away before these meetings, or consideration of the bills.

Mr. MALETZ. Were there any subsequent meetings?

Mr. TUCKER. Since that day?

Mr. MALETZ. You said there was just that one meeting. What happened after that? Were there local or regional meetings?

Mr. TUCKER. The dealers were asked to hold group, district, line by line, or all-line meetings, whatever, in their own thinking they could best explain.

The CHAIRMAN. Well, thank you, Mr. Tucker, very much.

Mr. TUCKER. Thank you.

The CHAIRMAN. Our next witness is Mr. Steward C. Holman, Ford dealer in Merchantville, N. J.

STATEMENT OF STEWARD C. HOLMAN, FORD DEALER IN MERCHANTVILLE, N. J.

Mr. HOLMAN. Mr. Chairman, I was requested by Congressman Wolverson to bring copies—do you want those at this time?

The CHAIRMAN. I have read your first paragraph. Suppose you start with your second paragraph.

Have you given your name to the stenographer?

Mr. HOLMAN. My name is Steward C. Holman of Merchantville, N. J.

The CHAIRMAN. Start out with your second paragraph. We have read the first one.

Mr. HOLMAN. I am not only against this particular piece of legislation under discussion, it is my opinion no congressional legislation is needed at the present time. I hope none ever is needed. It always seems to me original legislation does not anticipate all the ramifications of the problem it is trying to cure and results in more and more legislation. In the present situation, I think there has been over-emphasis on the automobile factories being the big bad wolf. I do not think the major part of the present automobile dealer problems is factory-dealer relations or contract improvements. The adjustments of market change is our biggest problem.

I am not here in any way to defend the Ford Motor Co. I have been an outspoken critic of many of their policies with other dealers and in dealer councils. I expect to continue to resist anything that I do not consider sound business policy for my business.

The CHAIRMAN. Mr. Holman, would you be good enough to stop and step from the stand for awhile?

Mr. TUCKER, I want you to identify the minutes of that meeting at Dearborn. I just hand this to you, Mr. Tucker, this pamphlet, and I ask you whether that is the printed document that was circulated at the Dearborn meeting.

Mr. TUCKER. I have checked the dealer's statement and the dealer's recommended action.

Those are the minutes of the dealer group; yes, sir.

The CHAIRMAN. Was that printed by the Ford Motor Co.

Mr. TUCKER. That was printed by the Ford Motor Co. and distributed to all 9,000 dealers of the company.

The CHAIRMAN. And the expense was paid by the Ford Motor Co.?

Mr. TUCKER. Yes, sir.

The CHAIRMAN. Thank you. That will be accepted in the record. Go ahead. I am sorry to have interrupted.

(The minutes referred to are as follows:)

THE FACTS ON DEALER LEGISLATION PENDING BEFORE CONGRESS

EMERGENCY MEETING CONVENED ON DEALER LEGISLATION

On Wednesday, June 20, 1936, an emergency meeting of 125 representative Ford, Mercury, and Lincoln dealers and top company executives was called to discuss impending legislation affecting the relations of automobile dealers and manufacturers. Henry Ford II, president, Ford Motor Co., opened the meeting to ask for the dealers' comments on the proposed legislation. William T. Gossett, vice president and general counsel, discussed in some detail the legal aspects of certain bills, especially the Monroney and O'Mahoney bills, which have drastic implications for the future of dealers as well as manufacturers. Ernest R. Breech, chairman of the board, summarized the concern of the company that the proposed legislation, if passed, would disrupt and perhaps destroy the whole authorized dealer system of automotive distribution.

The assembled dealers expressed grave concern over widespread misconceptions of the bills and their implications, and urged that a summary of the information offered at the special meeting be made available to all dealers of Ford Motor Co.

This summary has been prepared in compliance with their request. Because of the urgency of the problem, it was felt necessary to cover here in some detail the legal implications of the two bills in order to make their flaws completely evident.

At the conclusion of the general discussion, a meeting of the dealers, under the chairmanship of Hayse Tucker, of Tuscaloosa, Ala., adopted the following resolution and seven-point program of action:

DEALERS' STATEMENT

Small and large automobile dealers from all sections of the country have today concluded a meeting at which all aspects of the Monroney and O'Mahoney bills, now before the Congress, have been fully and openly discussed.

We have reached the following conclusions:

(1) If the O'Mahoney bill becomes a law, the automobile bootlegger will be able to thrive and prosper, to our detriment, as never before. This is because, under the provisions of the bill, no one will be able to take any effective action against bootlegging and other unethical practices.

(2) If the Monroney bill becomes a law, the Government, through the Federal Trade Commission, will be required to enter into every phase of our business—including contract provisions, prices and profit margins—and the days of NRA and OPA will look like paradise by comparison. We are therefore against the passage of this bill.

(3) If either or both of these bills become law, the manufacturers may well be forced to seek entirely new methods of distributing, selling, and servicing the cars and trucks they make, methods that could seriously affect not only our future profits but the very existence of authorized dealerships. For this very important reason, we are against each of these bills.

(4) Our final conclusion is that the combined provisions of these bills fail completely to meet the objectives of those who, several months ago, set out in all sincerity to cure certain recognized evils and abuses in our business. The O'Mahoney and the Monroney bills—in their present form—may well kill the patient instead of curing him.

For these basic reasons, we hope that no bills concerning automobile factory-dealer relationships will be passed at this session of Congress. We are communicating to our Senators and Congressmen these conclusions. We urge, in the interests of the successful future of all of us, that all dealers will do the same, and as quickly as possible.

DEALERS' ACTION PROGRAM

Also adopted unanimously was the following seven-point program of action:

- (1) Every member to be furnished a copy of the resolution in order to study its import and consequences.
- (2) Every member to take the individual responsibility of sending to his Congressman and Senator a telegram of his position on both bills, individually signed, individually worded, and sent from his home address.
- (3) Every member to head a campaign of individually written letters on his own letterhead, individually signed, to whatever group or groups that appears logical.
- (4) Each member to get the cooperation of competitive dealers in a similar program.
- (5) Each member to promote local, county, and district meetings of groups which have not been advised of the real portent of these bills—to educate and seek favorable action.
- (6) Each member present to write an individual letter to the Congressmen from his State on the House Committees on Foreign and Domestic Commerce, Rules, etc., and the comparable Committees of the Senate.
- (7) Each member to volunteer to testify, and to contact his own Congressman or Senator to this end.

SUMMARY OF STATEMENT BY WILLIAM T. GOSSETT, VICE PRESIDENT AND GENERAL COUNSEL OF FORD MOTOR CO.

I am glad of the opportunity to speak to this representative group of Ford Motor Co. dealers because we are seriously concerned about this legislative situation. We are concerned not in any selfish, narrow way. We believe our interests are identical with those of our dealers in this matter. We believe that the proposed legislation, though it will be bad for everybody, will be most seriously damaging to the dealers.

We believe, not only that a good many dealers have failed to analyze the proposed legislation and its implications, but that the same can be said for many Members of Congress. Though we are trying hard to correct that situation, we have had to work on short notice. Without any real warning we were presented only a few days ago with two bills, the Monroney and the O'Mahoney bills. In the case of the O'Mahoney bill, there have been no hearings at all.

In order to understand the serious implications of these bills for you and for us, you don't have to be lawyers. But you do have to examine the language of the bills carefully before their fallacies become obvious.

Let's look at these bills on their merits. I'll just mention the more obvious snags. If you have any questions whatever, please raise them as I go along.

First, take the Monroney bill. The bill is short, but it isn't by any means simple. As we proceed, you will see how it throws up one roadblock after another in the path of an effective, workable manufacturer-dealer relationship—often purely inadvertently, I'm sure—but nevertheless, roadblocks which make the bill almost impossible for the manufacturer or the dealer to live with.

One section of the bill makes it illegal under the FTC Act for a manufacturer to induce any of its dealers to order or accept for delivery any product "by means of coercion, intimidation, or discrimination."

Surely nobody could be in favor of such methods. Ford Motor Co. certainly has no objection in principle to that language. Our problem is: What does it mean? We think in one sense it is superfluous; it expresses the law pretty much as it exists today.

On the other hand, the failure to define the terms "coercion", "intimidation" and so on means that we might be subject to legal reprisal for such normal activities as insisting that dealers maintain sufficient stocks to provide adequate representation and service. We could not under this language even require a dealer to "accept for delivery" products he had actually ordered. If the manufacturer could no longer insist on such elementary principles of good business, the value to him of the existing authorized dealership system would be weakened.

Another section, the so-called antibootlegging section, has two main provisions. First, it would make it illegal for a dealer knowingly to sell a new car for resale as a new car in competition with a dealer of the same make, without first giving his manufacturer a chance to buy back the automobile "at the price paid therefor."

Second, it would make it illegal for the manufacturer to refuse to buy back that car under an agreed plan, which I will tell you about in a minute.

This section, in whole or in its separate parts, is worse than unworkable.

It would not do what it sets out to do. It obviously would not stop bootlegging, and I have yet to talk to any dealer who believes it would. Here's why.

First of all, to make it effective you would have to prove, in each case of suspected bootlegging, that the dealer knowingly sold it for resale as a new vehicle. Not only would that be almost impossible to prove, but as most of us know, most of these bootleg cars are sold not as new cars, but as used cars.

Presumably, the incentive of the bill not to bootleg is the provision that the dealer has a right and obligation to resell the car to the manufacturer "at the price paid therefor." But the language does not define, and Senator Monroney himself failed to define for me, what that price includes—whether it includes the destination and delivery charges, for example. If it doesn't, the question is whether this legislation would lead a potential bootlegger to return the car to the manufacturer and get back what he paid, less freight and other charges. Would he take that loss, or would he prefer to take a quick profit in the bootleg market?

Certainly the bill contains no strong sanction. The only penalty of the statute would be that an erring dealer would be cited by the Federal Trade Commission. He would undergo a lot of hearings and, if found guilty, he would be served with a cease and desist order probably months after the event. He would be told not to do it any more. That is not much of a penalty.

The major premise of the section is that the sole cause of bootlegging today is the pressure of the car manufacturer. If that is not the case, and we know it is not, the measure does not correct bootlegging. If it is the case, then the problem is satisfactorily dealt with by that earlier section which says you cannot coerce or discriminate against a dealer.

Next let's look at the second part of this section—the repurchase provision. This would make it illegal for a manufacturer not to buy back cars offered to him by dealers at that ambiguous "price paid therefor" and under the terms of a "plan adopted by such manufacturer which is equitable to all dealers and consistent with the financial resources of such manufacturer."

Under this provision, the manufacturer would be obligated to take back cars without prior notice, in unknown quantities, at unpredictable times—an entirely intolerable situation from his standpoint.

The manufacturer would have nothing to do with the selling of the cars. If a profit were to be made, the dealer would make it. If there were a loss to be taken, the factory would take it. Obviously, if we had to assume that kind of risk, without any influence over the selling, our whole system of distribution would be jeopardized. We would have to take a very long look at it. Both the short- and long-term consequences of that provision would be thoroughly unhappy for us and for the dealers.

Suppose, for example, that a situation arose in which we would have to take back 70, 80, or even a hundred thousand cars. What would we do with those cars? We couldn't eat them. We couldn't scrap them. Obviously, we would first try to sell them through our dealers—the ones who had not turned back cars to us. Certainly they would be justified in refusing to take those cars, and certainly we would not be able to put any pressure on them.

So we would have to turn to other means—perhaps sell them to used car dealers at reduced prices. The effect of that would be worse than bootlegging. We would have to get rid of the cars in large quantities and perhaps at a time and place when it would most be disadvantageous to some of our dealers.

Mr. Breech is going to discuss with you some of the possible consequences of the transfer of business risk inherent in this part of the proposed legislation. We are also going to place before you comments by various Government agencies and by an impartial, outstanding business economist concerning the potentially grave consequences of this section. So I will pass that for the present.

There is another aspect to this legislation, however, that concerns us all. It will inevitably plunge our industry, both the manufacturers and dealers, into direct peacetime governmental control and regulation without any parallel or precedent in the history of manufacturing industries. The Federal Trade Commission itself, which would be the main instrument of the proposed extensive regulation, stressed that fact in its communication opposing the Monroney bill. (See excerpts.)

For example, in order to pass upon the repurchase plan required by the law, to assure that it is "equitable to all dealers" and consistent with the financial resources of the manufacturers, the FTC would have to become deeply involved in the financial situations of the dealers and the manufacturers.

Another section of the bill makes it illegal for a manufacturer to require dealers to fulfill warranties and render services unless the manufacturer works out a reasonable system for compensating its dealers—not for the actual work they do—but merely for maintaining personnel and facilities required to fulfill such warranties and render such services.

I suggest that whoever prepared that language didn't know much about the automobile business.

Be that as it may, under this provision, the Federal Trade Commission would be called into the act to pass upon the plan for compensating dealers for maintaining personnel and facilities. As soon as the public got wind of this, they could go right to the FTC. They could ask it to pass on the labor rates of dealers. They could ask it to pass on the dealers' profit margins. The FTC is going to be told that the dealers are charging too much and making too much money. But whether or not the public complained to the FTC, all of these subjects would be relevant to a determination of what would be a reasonable system for compensating the dealers, and so, through this second door the FTC would get even deeper into the day-to-day operations of the dealerships, as well as of the manufacturers.

It seems to me that the dealers who complained most about emergency regulations, such as OPA and NRA, are the same ones who are now shortsightedly seeking legislation to adjust all the problems between the dealer and the factory.

Another unhappy feature of this bill is that it would lead to endless litigation and uncertainties in the manufacturer-dealer relationship.

Another provision of the bill would make it illegal for the manufacturer, without the dealer's consent, to cancel the franchise unless (a) the contract contains agreed standards of the dealer's duties and obligations and (b) the dealer has failed to perform one or more of them in a reasonable manner.

The immediate effect of this would be to force the manufacturer to try to draw up a highly detailed contract of short duration. In order to protect ourselves, we would have to submit the contract to the Federal Trade Commission for approval. We would be engaged and the dealers would be engaged in building up a record, and instead of worrying about the important things, we all would be worrying about the technical procedures that might have to be brought before the Federal Trade Commission.

I assume we would wind up with several forms of contracts because the situation would vary in various areas. The whole procedure would give rise to constant controversy, to charges and countercharges and to endless litigation.

Still another provision of the bill would make it illegal for a manufacturer to cancel or fail to renew the dealer franchise without agreeing to bring about an equitable liquidation of the assets of the dealership.

As you know, we now have very specific provisions in our contract concerning liquidation of the assets of a terminated dealer. But the vague language of this provision is a matter of concern. As we interpret it, it would require the manufacturer to arrange for the equitable liquidation of assets even of a dealer terminated by reason of an illegal act, of fraud, or bankruptcy. Moreover, it would require liquidation of all assets whether or not they were really needed to conduct the dealer's business.

So far as the dealer is concerned, the rub is clear. If the manufacturer must help the dealer liquidate without regard to whether his assets are good or bad, obviously the manufacturers must have a say in the dealer's purchase of assets and have some power of veto which they don't have now. Thus the dealer would tend to become less rather than more independent.

Once again, in working out the terms of equitable liquidation, we would find the Federal Trade Commission involved in our business.

I think the result of all this legislation is perfectly manifest to anyone who thinks it through. It will bring the Federal Government deep into the day-to-day operations of our industry. Do the dealers really want this?

I think it is clear to all of us at Ford Motor Co. that we have not given sufficient attention to working out some of the dealers' problems. But that situation is now being corrected, and corrected fast. The question now is whether we start down the long, dusty road of Government regulation. Without exception every industry that has done so has regretted it: The railroads, the public utilities, the power industry. And the effect of legislative regulation has always been that the parties do only what they are required by law to do. They go just—and only—as far as they have to go in fixing up their differences under legislation. They rely upon Government agencies to do the rest.

It seems to me that in this industry, above all others, our interests are mutual. We want you to be strong. We are concerned with your strength and well-being as you are with ours. Before we resort to such drastic regulation as is suggested by this legislation, we ought to do our level best to put our own house in order. When an industry once gets into the hands of the politicians, they never let it go.

And I am certain that what they will do in the guise of protecting the public interest ultimately will do more damage and put a greater burden on the dealers than on the manufacturers.

Have you ever stopped to think, for example, that if the dealers should get a special benefit in the form of Federal legislation and regulation by Government bodies, they would be more likely to be held subject to the rules and regulations of other Federal legislation, the application of which to the dealer is of doubtful validity today? I am sure there are those who would press that case with a great deal of force, and I don't think the consequences would be palatable.

When I was down before Senator Monroney, he said, "Well, you are just worrying about a bunch of hobgoblins that are never going to happen." But the answer to that is that the Departments of Justice, and of Commerce, and the Federal Trade Commission have all expressed the same kind of concern about the proposed legislation that I have expressed here today. (See excerpts.)

Now just a very brief word about the O'Mahoney bill. This bill, as recently amended on the Senate floor, provides that the dealer may bring suit against a manufacturer in Federal courts and may receive compensatory damages sustained by him by reason of the failure of the factory to act in good faith in complying with the terms of the franchise, or in terminating, canceling or not renewing the franchise. The manufacturer would not be barred from asserting in defense the failure of the dealer to act in good faith.

While once again, this sounds just like being on the side of the angels, the ambiguity of this bill would tend greatly to increase litigation and a litigious outlook in our whole relationship. From the standpoint of the dealers, it would have the equally serious consequence of protecting unscrupulous dealers in engaging in bootlegging and other unethical practices. But the language goes even further; it would seem to require the manufacturer to guarantee the dealer against coercion and intimidation from any source.

It seems to me, gentlemen, that nothing that has been offered in the Congress thus far in the way of laws will be half as acceptable to you and us as the kind of settlements we can work out in the good, traditional private enterprise way—inside the family.

But however that may be, it is perfectly clear that the foreseeable consequences of the proposed legislation that I have discussed are so serious that it should be opposed, not only by the manufacturers, but by every dealer.

OUTLINE OF REMARKS BY ERNEST R. BREECH, CHAIRMAN OF THE BOARD,
FORD MOTOR CO.

I hope you listened carefully to Mr. Gossett's remarks. He has not exaggerated in the slightest the possible effects of the proposed legislation.

The Ford Motor Co. has great confidence in the present industry system of distribution through authorized dealers. It has always worked well and, we hope, always will—to the benefit of the dealers and ourselves.

We will maintain our established authorized dealer system as long as we can do so. We are going to do our best to make the system work under any present or future legislation.

We owe to you, as well as ourselves, the utmost candor and sincerity in stating the problems as we see them.

Our business is a high volume, low cost business. If the volume is reduced, prices must increase, thus further reducing volume.

Our study of the proposed legislation has led us to the considered opinion that the legislation could have the effect of reducing volume and increasing prices. Indeed, we do not see how that result could be avoided on a short-term basis.

Obviously, if the proposed legislation is passed and becomes effective, we must take such steps as we think are necessary to maintain reasonably high volume and low prices.

If this result can be attained under the present authorized dealer system, that is the way we will move.

We are convinced, however, that if the legislation were passed, important changes in our present system of distribution will have to be made.

We will have to spell out in specific detail in our contracts all of the obligations and rights of the parties. For example, it might be necessary to specify the exact number of cars and the value of the service parts and accessories which the dealer would be obligated to purchase.

In the interest of both parties, the contracts would be of short duration—not more than 1 year.

Obviously, if we are to assume the risks of the dealers' inventories, as is provided in the Monroney bill, we could not justify the present price structure; it would have to be adjusted in accordance with the new distribution of risks imposed by the statute.

If we are compelled to repurchase cars from dealers, and other dealers are unwilling to merchandise them, we will have to sell them in competition with our dealers.

If we are to be required to compensate dealers for maintaining warranty and service facilities and personnel without reference to their performance of warranty and service obligations, we might be compelled to set up service facilities of our own, in the large metropolitan areas at least. We are also considering alternative moves, such as changing our entire pricing and discount structure on service parts.

In smaller cities we might be forced to authorize others besides authorized dealers to perform warranty and service work.

If we are to assume broad responsibility in connection with the liquidation of any dealer terminated, we would have to exercise close control over the purchase of assets by a dealer. This would be provided in our new contract.

If we are to be allowed to exert no effective influence concerning the sales of dealers, we obviously may be required to add a larger number of dealers and various kinds of dealers in order to maintain the volume of our production and keep prices down.

The ultimate effect of such adjustments as we can envisage would be to change the character of the distribution of automobiles in this country. It would not have the effect of increasing the independence and importance of our dealers, but would more likely have the opposite effect.

It would reduce their margin of profits, certainly if the matter were left to the Federal Trade Commission.

It would jeopardize their service and parts business.

It would cause strife and litigation in the industry and instead of bringing the parties closer together in cooperative effort it would tend to create friction and controversy between them.

Any relationship that depends upon legal provisions and Government regulation for its health and welfare will in the long run fail.

I hope that you will not interpret anything I have said as a threat. I said at the outset that we owed to each other the utmost candor and sincerity. I simply have been trying to think out loud and tell you what might be the results of the kind of legislation that has been proposed.

Naturally, I hope that this legislation will not pass. As I have said before, if it does pass, we will do our best to live under it, but what I have described is our best appraisal of some possible results of the legislation.

EXCERPTS FROM STATEMENTS ON THE PROPOSED BILLS

Communication from the Chairman of the Federal Trade Commission to Senator Warren G. Magnuson of the United States Senate Committee on Interstate and Foreign Commerce on the Monroney bill (S. 3946) :

" * * * The present proposal appears to be directed toward singling out a particular group of distributors, not unlike other groups of distributors who also operate under franchise arrangements with manufacturers, and conferring upon them rather unusual privileges presumably for the purpose of correcting abuses. It may be an open question whether, if such legislation should be enacted, it would have the result anticipated or, on the contrary, bring about or hasten radical changes in distribution of automobiles.

"Our basic objection to the proposal, however, is that it would put the Government into actively supervising and, in a measure, controlling, and regulating the business relations between private parties, business relations which have no more bearing upon the public interest as a whole than the business relations between any other private parties. It would require this agency to inquire publicly and

in detail into the financial resources of manufacturers; into the nature, extent, and cost of personnel and facilities of dealers; and to supervise the adequacy of contractual provisions between manufacturers and dealers and concern itself with the liquidation of assets of dealerships. It thus interferes with many aspects of normal business relations between private parties and in the process of so doing curtails several basic rights, such as the right of a seller to select his customers, and to the extent that it might become operative, tends to freeze a particular system of marketing rather than leaving the flexibility which the market place requires.

"For he reasons stated the Federal Trade Commission recommends that the bill be not enacted."

Communication of the Secretary of Commerce to Senator Magnuson on the Monroey bill:

"* * * In effect, this proposed legislation would put the Federal Trade Commission in the position of closely regulating virtually all aspects of dealer relationships in the automotive industry. It would put into effect a broad scope of Government regulatory control of automotive marketing that has never been undertaken in any other competitive industry or any phase of product distribution in our entire economy. Although the objective of this legislation is the elimination of a number of problems which have developed in the past in connection with automotive marketing, the effect would be the creation of many new and unforeseen problems rather than correction of old problems.

"It is true that there have been frequent complaints from automotive dealers as to some aspects of their dealership contracts and there is no doubt that some of these complaints have been justified. It should be noted, however, that the automotive industry has itself moved rapidly to improve the situation and to eliminate the grounds for dealer complaints. Automotive manufacturers have in recent months established dealer councils to help solve the problems which arise between manufacturers and dealers. They have offered dealers long-term sales agreements and have established equitable procedures for handling of cases involving termination of dealer contracts. In addition, arrangements have been made for reimbursement of dealers for services performed on warranty work. These steps have gone a long way toward meeting the problems that have been previously raised and because of this there is, in our opinion, no need at this time for Federal regulation of the type proposed in S. 3946. We are confident that the automotive industry itself can most effectively work out its own internal problems in a cooperative spirit without Federal regulation.

"In view of the importance of the automotive industry in our economy and the dependence of so many other industries upon this industry, extreme care must be taken to avoid any type of action which might inhibit the continued vigorous growth of the industry or which might upset the economic balances which exist within the industry. Federal regulation is at best a poor substitute for free economic activity and should be invoked only in situations where there is present a problem of such dimensions that Federal action is necessary and no other alternatives are available or all other measures have failed. Certainly this is not true with respect to the marketing and distribution of automobiles. The problems which have been presented there are now being worked out by the industry itself and we are confident that a proper and equitable solution will be reached on all of these problems.

"We, therefore, urge that action on the proposed legislation be deferred so as to give the industry adequate time to deal with its own problems. If at some time in the future it may appear that these problems have not been properly taken care of further consideration may at that time be given to corrective legislation."

Comments by Joel Dean, independent economist, marketing specialist, and professor of business economics of the Columbia University Graduate School of Business on the Monroey bill:

"* * * These short-run effects would eventually impel automobile manufacturers to search for other and more efficient ways to market their cars competitively. These might include:

"1. Increasing the number of retail car dealers and stripping them of some of their functions with a resulting narrower retail profit margin and a decline in the value of the dealer franchise.

"2. Separation of the retail functions of sales and service.

"3. Entry of the manufacturers directly into retail selling, servicing, or both.

"If the number of dealers were increased and their functions cut down, there would probably be greater instability in the dealer population in the long run. If dealers were more numerous, less protected geographically, and with fewer sources of continuing revenue, individual dealers would be less substantial than at present and their number would be more responsible to fluctuations in the demand for new cars. It would be easier both to get into the business and to get out. * * *

"* * * In conclusion, this bill raises some broad questions which I am sure the committee will want to consider:

"1. The bill will inject the Federal Trade Commission into the day-to-day decisions of automobile marketing, and will cause inefficiency, uncertainty, and litigation.

"2. The bill runs counter to antimonopoly legislation. It would lessen competition by removing the sales push of the manufacturer and by supporting the desires of some dealers for smaller volume at higher prices. Hence it would injure the consumer and be an obstacle to economic progress.

"3. If enacted, this bill would set a sweeping precedent, as both Senator Monroney and Senator Bennett have pointed out. Other industries, particularly durable goods, have similar marketing problems. It would be hard to deny dealers of farm equipment, major appliances, and other products the same treatment which this bill gives to automobile dealers.

"4. The bill is likely to prove ineffectual in the long run in obtaining for the dealers the benefits they seek. The bill would either prove to have loopholes which would in effect nullify it, or it would be so effective in the short run that manufacturers would in the long run be forced to modify basically the structure of automobile retailing."

Communication from William P. Rogers, Deputy Attorney General of the United States, to Senator Joseph C. O'Mahoney, chairman, Subcommittee on Antitrust and Monopoly of the United States Senate, concerning the O'Mahoney bill (S. 3879):

"This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule we continue to oppose special legislation applying to any one industry.

"Beyond that, comment on the bill's extremely broad wording is complicated by the absence of that public discussion and analysis which hearings would likely evoke. Principal questions stem from the consideration of section 1 (e)'s definition of 'good faith.'

"Initially, the manufacturer is obliged, upon pain of double damages, to 'guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation * * *'. While we are opposed to the coercion of any dealers, including automobile dealers, to accept products for resale, this practice may be at present an unfair method of competition under the Federal Trade Commission Act. * * *

"For all these reasons, I am unable to recommend enactment of this bill."

Mr. HOLMAN. I am not here in any way to defend the Ford Motor Co. I have been an outspoken critic of many of their policies with other dealers and in dealer councils. I expect to continue to resist anything that I do not consider sound business policy for my business.

The CHAIRMAN. Were you present at the Dearborn meeting?

Mr. HOLMAN. Yes, sir; I was.

I might state at this time that I would not want to be construed in any way, that the Ford Motor Co. could in any way brainwash me or affect my opinion about this legislation.

I have correspondence here with Congressman Wolverton which states my position. Congressman Wolverton wrote me on March 3, with reference to the—well, this legislation, with reference to the Monroney legislation on May 3, and we replied to it on that date, stating our position to Congressman Wolverton, and what I have written here myself is myself, and I did not have any help from Ford Motor Co. counsel or anybody else.

Congressman Wolverton has known me for 30 years, and on automobile legislation in the Congress he has always written me for our opinion. He wrote me on this Monroney legislation which is in the general area of what we are talking about.

He wrote me on March 3, and we expressed our opinion at that time and when this thing came up I was invited to Detroit.

I went out there. I don't know whether they are going to pay my expenses or not. It is in the telegram—it is not important.

But, regardless of any of the discussions out there, Mr. Celler, I have been on record with my position in this thing, and I have expressed my viewpoint to Congressman Wolverton principally and substantially the same as I am reading now.

The CHAIRMAN. At this meeting which you attended at Dearborn, were you asked to testify before this committee or the committee in the Senate against either of these bills? Was it suggested to you that you testify against these bills?

Mr. HOLMAN. In principle—I would not word it just exactly that way. The sense of the resolution passed would be that we would stand up and be counted if this was our opinion.

The CHAIRMAN. Were you asked to send wires and letters to Members of Congress expressing your views?

Mr. HOLMAN. The way it worked out, they appointed this committee, and the committee made a recommendation of seven items, which I believe included that activity.

The CHAIRMAN. Go ahead.

Mr. HOLMAN. I do not think there has been proper consideration given by NADA or congressional hearings of the genuine effort our factory has made to help dealers operate profitably. There is no question the profits in my business have been immeasurably improved by the help and counsel of factory personnel.

I think a large percentage of the dealers would agree that this is correct. Along the way, they pulled some first-class boners, but I believe their efforts have always been on the side of trying to be helpful.

I have been in the business 32 years; I think I know the personalities of the people who are forming the policy of the Ford Motor Co. I believe they are sincere, honest people; I have confidence in their judgment, that they are in the process of making such necessary contract improvements that seem desirable. I have no fear of what any factory can do to me. I don't owe them anything, and they don't owe me anything, and I operate on that basis.

I believe this is a risk and problem business, and that adequate profit opportunities are in relation to the risk and problems involved. I am concerned if you legislate less risk in this business, the profit opportunities may be proportionately reduced.

I am very much concerned that this specific legislation under consideration might increase some of our problems rather than reduce our problems. I would think it would be more of a problem to control the bootlegging of automobiles.

I would think it would be more of a problem to generally deal with the undesirable elements that get into our business. It would be a bad business for me and my family—and most of my family are in it with me—if our factories could not deal effectively with the shoddiness in the business.

That is the general area in which I am concerned, and this is not in my notes, but from the general discussions around here, we have an awful lot of shoddiness in our business, and there is no other way of dealing with it, but, you might say, the authority or the discipline of the factory and if you go too far in that direction, I am afraid that you are going to make it possible for some pretty shoddy elements in our business to perpetuate themselves, or highjack the factory, or bring down the standard of our business, which sometimes has not been all I would like it to be.

I will hurry along with this statement, Mr. Celler.

These statements might seem inconsistent with my membership in NADA. I don't think so. I don't think Congressmen agree with all the activities of all the programs of their party chairman. NADA has done a wonderful job in promoting hearings which have brought out some of the things which need refinement in factory and dealer relations.

I do not think the average dealer is sufficiently well informed to specifically state that he wants this legislation or any other legislation.

In a recent meeting of approximately 90 Philadelphia and south Jersey automobile dealers, I asked for an expression of how many considered themselves familiar with any of the proposed legislation.

Less than 20 percent raised their hands.

Until such time as a great majority of automobile dealers would seem to be familiar with specific legislation and want it, I do not think any legislation should be passed.

As I said before, I have no problems with the factory that I do not think I can handle myself.

And I am concerned that the problem of policing this business cannot be handled effectively by legislation and—as I say, the factory, they are our only source of cleaning up some of the things that we are trying to get rid of, and I think you have, through your hearings, you have accomplished the improvements in our contractual relations that we—they are all in the process of being desirable.

I appreciate very much being heard.

The CHAIRMAN. Thank you, sir.

I have from Congressman Howard Baker a request to place in the record a statement from Mr. F. D. Eagleton, Ford dealer in Maryville, Tenn.

(The statement referred to follows:)

STATEMENT OF F. D. EAGLETON, FORD DEALER, MARYVILLE, TENN.

My name is F. D. Eagleton. I have been a Ford dealer in Maryville, Tenn., since 1944, operating as Costner & Eagleton Motors, a partnership. In my years as a Ford dealer, I have never been coerced or intimidated in any way, but I feel that better factory-dealer relations are necessary to the progress and benefit of our business. This, by necessity, is a hard-selling business. When that is eliminated, the business itself will be hurt.

I firmly believe that the manufacturers are well cognizant of the fact of the importance of its dealers and are taking and will take steps for better relationships. Therefore I am opposed to any and all legislation toward this end, as I believe it can be better accomplished by mutually agreeing and working out our differences.

Toward this end, the Ford Motor Co. has already set up its dealer policy board and new contracts are in the process of being made for the dealer organization.

In the last week I have talked to approximately 100 dealers (mainly Ford, but of all makes). Almost three-fourths of these dealers have assured me that they

are definitely against any form of legislation pertaining to the automobile business. If this proposed legislation should pass, it would make it almost impossible for a manufacturer to rid itself of a bad dealer who not only is hurting other dealers in his community but the reputation of the product which he is selling. Once we have started the way of legislation, there seems to be no end to it, but it tends to grow from year to year.

The CHAIRMAN. Now, will Messrs. Tuttle and Matthews and Danner come forward?

Now, will you just sit down a minute there, all together? I am trying to expedite the consideration of these bills.

Where is the other gentleman? Mr. Tucker, Mr. Danner, Mr. Matthews and Mr. Tuttle.

Gentlemen, I am trying to expedite the situation. It is now a quarter after 5, and we have been here since 10 o'clock this morning with one interruption on the floor of the House.

Now, you all have statements, I take it?

Mr. TUTTLE. Yes.

Mr. MATTHEWS. Yes.

Mr. DANNER. Yes.

Mr. TUCKER. Yes.

The CHAIRMAN. I would like you to place those statements in the record.

Now, is there anything additional to what we have heard expressed in these previous statements, or would you care briefly to indicate something beyond what we have heard here, rather than repeating what we have heard?

Mr. TUTTLE. Yes, sir; I have a—

The CHAIRMAN. What is your name, sir?

Mr. TUTTLE. Holmes Tuttle, from Los Angeles, Calif.

STATEMENT OF HOLMES TUTTLE, LOS ANGELES, CALIF.

Mr. TUTTLE. I have a statement here that I would like to submit for the record. I would like to make one statement, Mr. Chairman.

In regard to this meeting, at the outset, I would like to tell you that I was at this meeting at Dearborn. But I would like to correct the implication that this was strictly a factory meeting. After the implications of the bill were given to us, the meeting was immediately adjourned, and from there on out it became a dealers' meeting, and any recommendations that were made were made by the dealers.

Now, I have some further evidence here that I would like to present from the meeting that was held in southern California. The fault that I find, and many of my fellow dealers—and I represent here a meeting of 100 individual dealers—

The CHAIRMAN. You represent 100 dealers?

Mr. TUTTLE. A little over 100; yes, sir.

The CHAIRMAN. Did you call them together?

Mr. TUTTLE. Not myself; no sir. I was assisted by four or five fellow dealers.

The CHAIRMAN. Where are these dealers?

Mr. TUTTLE. In Los Angeles County and Orange County.

The CHAIRMAN. Did they meet anywhere under your auspices?

Mr. TUTTLE. No; not under my auspices alone, but under the auspices of about 5 or 6 Ford dealers, who after we got home, got to discussing this bill, and I called the local association. We could not get

the local association to call a meeting we took it on our shoulders to call the meeting.

We called the meeting together by ourselves. We had legal counsel there to explain the legal implications of the bill. I would like to tell you what took place at this meeting, if I may.

The CHAIRMAN. Yes. Go ahead.

Mr. TUTTLE. It has been presented as evidence here that all of the dealers were unanimously in favor of the enactment of this bill. They might be true in some parts of the country, but in southern California, which today represent the largest market of automobiles in the United States—we represent about 10 or 15 percent of the total production of automobiles—that is not the case. Their dissatisfaction at this time is because they did not have the bill presented to them.

It was said that many small dealers were in favor of the bill but at this meeting 50 percent of the dealers could be classified as "small dealers."

The CHAIRMAN. I got a wire from the New York Ford Dealers Association, meeting at Lake Placid, indicating they had passed a resolution in favor of the bill.

Mr. TUTTLE. May I read the resolution from my group of dealers?

The CHAIRMAN. I beg your pardon?

Mr. TUTTLE. May I read the resolution from this group of dealers whom I represent?

The CHAIRMAN. Yes.

Mr. TUTTLE. I would like to present it as evidence.

The CHAIRMAN. Yes. It will be accepted in the record.

Mr. TUTTLE (reading):

EMANUEL CELLER,
House Office Building:

The undersigned Ford dealers who represent the majority of the Los Angeles and Orange County Ford dealers have, as of this date, June 25, 1956, unanimously adopted the following resolution; namely, that we are unalterably opposed to the Monroney and O'Mahoney bills and H. R. 11360 and H. R. 11500 now before Congress. These bills run contrary to our belief and approval of the free enterprise system. Furthermore, the majority of dealers have had no voice in this matter as indicated by unanimous approval today.

And they have signed the telegram.

(The telegram above referred to is as follows:)

HAWTHORNE, CALIF.

EMANUEL CELLER,
House Office Building, Washington, D. C.:

The undersigned Ford dealers who represent the majority of the Los Angeles and Orange County Ford dealers have as of this date June 25, 1956, unanimously adopted the following resolution; namely, that we are unalterably opposed to the Monroney and O'Mahoney bills and H. R. 11360 and H. R. 11500 now before Congress. These bills run contrary to our belief and approval of the free-enterprise

system furthermore the majority of dealers have had no voice in this matter as indicated by unanimous disapproval today.

Dan Ashcraft, Corson W. Ide, Phil Johnston, N. R. Bernard, George M. Sutton, Jr., Hamlin Nerney, Howard Cook, Harry Fortner, George Nuttl, Frank Galpin, Dave Grubbs, Vel Miletick, A. E. Klemmedson, Bill Froelich, Chas. Soderstrom, John Beber, Mitchell Cooper, Karl Kott, Bud Miller, L. E. Belknap, Mel M. Burns, E. Robert Breech, Jr., Dick Maitlen, Glen Coffey, Perry Holden, Jesse Ellico, Buster Kelley, Maurice Buerge, Robert Burns, William Behrens, Carlton Walker, Kurt Stommel, Wallace Wellman, Ralph Graham, Stockton Quincy, G. E. McKay, David Tope, Lyle Puckett, Ben Barclay, J. H. Wray, George Fortner, Fred Hauter, Harry Biszantz, E. R. Lindt, Hoyt Curtis, E. R. McCoy, Jerry Herfurth, Harlan Loud, Theodore Robbins, Arlee Mills, Don Caustin, Les Arkenberg, Ken Roggy, R. W. Davis, DeForest Lawrence, Freeman McKenzie, Jr., Fred Yerger, Ed Chaffee, Leland Johnson, Dick Barclay, Tom Stamp, Bob Davidson, Ira Escobar, Robert Smith, Chief Chamberlain, Frank Pretzlik, George Dunton, Roy White, John Dore, Al Engilman, Carl Hansen, Bill Fortner, Mark Downing, John Weld, J. W. Burch, C. H. Myers, Warren Escobar, Roy Pierce.

Mr. TUTTLE. May I say that these dealers whom I represent are all members of the National Automobile Dealers' Association, and, Mr. Chairman, never had this bill presented to them by the NADA.

At this meeting they expressed their opposition to this bill. We do not understand why our benefactors are in such a rush to get this bill through. In the case of such an important bill to our economy—it is far-reaching—that even legal advisers here cannot decide on the implications of it—why are they in such a hurry to get it through? Why don't they contact all of the dealers? Why don't they let the dealers be heard, if they want the bill? They have never been heard.

Now, as further evidence, I attended another meeting of a group of dealers of which I am very proud to state I am a member—and they are 20 outstanding Ford and Lincoln-Mercury dealers, geographically located in different parts of the United States, and we meet 3 times a year. We met this time in Seattle, Wash. After our regular meeting was held, we adjourned, and took up the discussion of the O'Mahoney bill, and we discussed it at length. With your kind indulgence, I would like to read the resolution from this group.

The CHAIRMAN. It is a similar resolution to the other; is it not?

Mr. TUTTLE. These dealers are not California dealers, Mr. Chairman. These dealers are geographically located in all parts of the country.

The CHAIRMAN. We will be glad to take the resolution and the names of all the individuals who appended their names to the resolution.

Mr. TUTTLE. It is very short. Could I kindly read it?

The CHAIRMAN. Time is running out.

Mr. TUTTLE. It will not take a second.

The CHAIRMAN. These other gentlemen want to be heard. Of course, it is all repetition. You are opposed to the bill.

Mr. TUTTLE. No. This is an entirely different approach, sir.

The CHAIRMAN. What is that?

Mr. TUTTLE. As I stated, this is an entirely different approach, sir.

The CHAIRMAN. Go ahead. Let us see the different approach.

Mr. TUTTLE. I will cut it as short as possible:

(1) That the proposed legislation—

and so on—

now before Congress runs contrary to our belief and approval of the free-enterprise system; and

(2) Further, that while we are sympathetic to certain aims of the bills, we have been promised, and are now awaiting new franchise provisions that will achieve these objectives without having to invoke governmental intervention.

In other words, we have been told and promised that there is a new contract in effect going to be presented to us, that we will have a 5-year contract, cancellable with cause, that will give us everything that this bill, I think, provides without Government intervention.

The CHAIRMAN. I take it that you never would have gotten such a proposal had there been no agitation for legislation of this sort.

Mr. TUTTLE. That is right, sir. You are absolutely right.

The CHAIRMAN. Therefore, the offering of the bill by Senator O'Mahoney, and the hearing we are having now, or the threatened hearing at this time, had a good and salutary effect.

Of course, it does not follow because the Ford Co. will give such a good contract—we do not know what the terms are, either—we are just surmising—

Mr. TUTTLE. The word "cause," Mr. Chairman; that you cannot be canceled without cause. That is what you—

The CHAIRMAN. We do not know what the terms really are. I hope it is going to be as sanguine as you anticipate.

Mr. TUTTLE. My legal counsel tells me that the word "cause" in there is all we want, that we cannot be canceled without cause, and we would have our day in court.

The CHAIRMAN. Anyhow, that is only one company. This legislation would cover all companies.

Mr. TUTTLE. Their names have been used quite freely here today.

The CHAIRMAN. We do not know what the other companies will do, what Chrysler or the other companies will do.

Mr. TUTTLE. Let me just finish here, please.

Wouldn't you much rather that we can handle this thing without Federal legislation if we obtain the same results? I am sure you gentlemen are interested in this automobile industry. I have heard legal counsel here today get into this thing, and there will be litigations. In fact, these gentlemen here will agree that we cannot even move in our business today without an attorney constantly at our side.

The CHAIRMAN. Wait just a minute, sir. What Ford can give, Ford can also take away. It does not mean that because Ford is giving you something, they cannot take it away from you.

Mr. TUTTLE. I went out of my way—

The CHAIRMAN. If you have legislation, once it is given, it cannot easily be taken away.

Mr. TUTTLE. There has been a lot of discussion here today about the big, bad wolf manufacturers, which I think is entirely exaggerated. I started in this business when I was quite young; in fact, I was 18 years old. This has been my 34th year with the Ford Motor Co., selling their products. Under this system, which is receiving so much criticism, I fortunately have accumulated, in that period of time, substantial wealth. We talked so much about the factory arbitrarily

canceled dealers. Before I came to appear before this committee, I checked with Mr. Arthur Hatch, who is now a member of the new Ford Motor dealer policy board, about cancellation in the western division, of which he has been regional manager for the past 11 years. These States include Colorado, Wyoming, Montana, Idaho, Nevada, Oregon, Washington, and California. There have been 7 terminations, 2 by cancellation, during these 11 years.

The CHAIRMAN. You know, there is more than one way to kill a cat.

Mr. TUTTLE. When Senator Monroney appeared before the Southern California Automobile Dealers' Association here 60 days ago with members of the NADA board of directors, there was no mention, at that time, of this proposed legislation. He stated that the Monroney committee would be kept in session to see that the things that were promised by the manufacturers would be effected. We are in agreement with that.

(The following resolution was submitted by Mr. Tuttle:)

The undersigned Ford dealers, whose volume in 1955 represented 5 percent of all Ford car and truck registrations in the United States, have this date, June 29, 1956, adopted the following resolution, namely:

(1) That the proposed legislation, bills H. R. 11360 and H. R. 11500, now before Congress, runs contrary to our belief and approval of the free-enterprise system; and

(2) Further, that while we are sympathetic to certain aims of the bills, we have been promised, and are now awaiting new franchise provisions that will achieve these objectives without having to invoke governmental intervention;

(3) And further, that we respectfully request Congress to table all such legislation until we have had a fair opportunity to complete our negotiations to the end that we receive such relief as we are seeking without the need for passage of these bills and their subsequent expense of enforcement.

Cecil P. Holland, All-Miami Motors, Inc., Miami, Fla.; E. W. Boyer, Boyer-Gilfillan, Minneapolis, Minn.; Cavalier Motor Co., Inc., Norfolk, Va.; G. S. Williams, Rudy Fick, Inc., Kansas City, Mo.; Walter A. McKae, Duval Motor Co., Jacksonville, Fla.; James L. Aldeman, Downtown Ford Sales, Indianapolis, Ind.; Stark Hickey, Inc., Detroit, Mich.; J. S. Lewis, partner, Herff Motor Co., Memphis, Tenn.; Edward J. Schoenherr, president, Stark Hickey Ford, Inc., Royal Oak, Mich.; Edw. R. Maher, Ed Maher, Inc., Dallas, Tex.; Max M. Lasky, Jr., Lasky Motor Car Corp., Brooklyn, N. Y.; F. Litsinger, Litsinger Motor Co., Chicago, Ill.; Wm. O. McKay, Wm. O. McKay Co., Seattle, Wash.; Axel Lynn, New Orleans Motor Co., New Orleans, La.; W. G. King, president, Richmond Motor Co., Richmond, Va.; S. C. Holman, president, Rice & Holman, Merchantville, N. J.; Paul Maxwell, Summers-Herrmann, Louisville, Ky.; Holmes Tuttle, Holmes Tuttle, Inc., Los Angeles, Calif.; J. W. Fullem, vice president, John B. White, Inc., Philadelphia, Pa.; Robertson M. Pearson, Raymond Pearson, Inc., Houston, Tex.

The CHAIRMAN. If the bills that we pass are no different from the arrangement that Ford will make with you, are you hurt?

Mr. TUTTLE. Well, sir, I have been in this a long time. I have tried to operate under Government control. I don't know whether you have or not.

The CHAIRMAN. But you—

Mr. TUTTLE. May I finish? If this is the only bill that you were going to pass to regulate our industry, with no further provisions, I would say O. K., but here today, in talking to different Members of Congress, there seem to be many other bills that are being discussed to regulate the automobile industry and, if I am not mistaken, they are planning another hearing shortly for the discussion.

The CHAIRMAN. Will you be the only ones who will benefit by this legislation? There is the great John Q. Public, also.

Mr. TUTTLE. The public will not profit from this, and before I forget it, I would like to make the records clear on one other subject in regard to the meeting that was held in Detroit. I paid my own expenses and my own hotel bill, and I did not receive the so-called telegram until after I had arrived in Detroit, where I had gone due to my health. I was called and asked to attend the meeting. Now, back to the bill. There has been discussion today with regard to the manufacturer going into the retail end of this business. Our executive vice president of the NADA says that he isn't worried about that. Well, he just doesn't know the facts. Are the dealers naive enough to think that if there is a sales potential of 1,000 cars in a given area and the franchised dealer there thinks that he should only sell 400 or 500 does he think that they will not put in another dealer, or start up a factory retail store of their own? We had this exact thing happen in the 1930's. I cannot give you the exact amount, but I know that throughout the country the factory had considerable retail stores.

The CHAIRMAN. Have you and the Ford dealers had an opportunity to argue this out before the National Automobile Dealers Association?

Mr. TUTTLE. No.

And I think that with a bill that is so important as this, to every dealer in the country, and if our association is as sincere as they say, then I think every one of the 42,000 dealers in the United States should have a chance to voice his opinion on this important piece of legislation.

The CHAIRMAN. Admiral Bell, I would like to ask you this: Was an opportunity given the members of the Ford Dealers Association to pass on the merits of this?

Mr. BELL. There have been numerous opportunities for every dealer in America. I would like to point out that NADA is a voluntary organization. A dealer doesn't have to belong. We cannot take punitive action against him if he doesn't want to belong.

This bill, every aspect of it, has been given to every member of NADA.

The CHAIRMAN. Including the Ford dealers?

Mr. BELL. Every member.

I have sent back to the office for—and I am going to ask your permission to put in the record—some of the information that we put out to our membership on this bill.

Mr. TUTTLE. May I ask a question?

The CHAIRMAN. Excuse me.

And the gentlemen around the table who are testifying now also received this bill and the information that you sent out?

Mr. BELL. If they are members in good standing of NADA, it was mailed to them. Whether they read it or not, I don't know.

Mr. TUTTLE. I would like to ask you a question.

Have you ever asked the voice of the 42,000 dealers in the way of a vote, as to what their opinion was of it?

Mr. BELL. Mr. Chairman, in my prepared statement this is all covered.

But to answer the gentleman very briefly, we have a democratic organization of 30,000 automobile dealers of all makes across the country. They operate through a board of directors of 54 dealers

elected by the members in those States. The gentleman has an elected voice on the board of directors of NADA.

There are 27 General Motors dealers on that board, and I think 11 Ford dealers, at the moment, or 17. All makes are represented. It is their unanimous desire that this legislation be enacted at this session.

Mr. TUTTLE. I question that. When he says it is unanimous, after the meeting is over, I would like to tell him of three directors that attended this meeting that tell me that they talked to the association, when they had a roundtable discussion, on the telephone and said that they would like to table this.

Mr. BELL. Mind you, I am in full agreement that following the meeting of these selected Ford dealers a couple of directors changed their minds.

Mr. TUTTLE. It isn't unanimous, then. At home we had somebody call from NADA the other day—here is what can happen—

The CHAIRMAN. In other words, Admiral Bell, the decision was unanimous, and then a change occurred subsequently on the part of some Ford dealers; is that it?

Mr. BELL. At the meeting of the board of directors held in Washington on the 13th, 14th, and 15th of June, it was the unanimous desire of our board of directors to press this legislation. I think we have had 1 or 2 directors, and I believe they were Ford directors, change their minds since the meeting in Dearborn.

The CHAIRMAN. Those who changed their minds were Ford dealers?

Mr. BELL. There is only one to my certain knowledge that changed his mind and he is a Ford dealer.

Mr. TUTTLE. We have other dealers—

(The prepared statement of Mr. Holmes Tuttle is as follows:)

PREPARED STATEMENT OF HOLMES TUTTLE

My name is Holmes P. Tuttle. I live in Los Angeles, Calif.

I have been engaged in the business of selling Ford automobiles for the past 34 years. My dealerships are located in Los Angeles and Beverly Hills, Calif., and are known as Holmes Tuttle, Inc., selling Ford automobiles and trucks, and as Beverly Lincoln-Mercury, selling Lincoln, Mercury, and Continental automobiles. I am the president of both firms.

I am sure that everyone recognizes the fact that the automobile business is once again in a cycle of difficult times. I am sure that the O'Mahoney bill, as originally conceived, was intended in some way to relieve these difficulties. We ourselves are trying to stabilize our business. The dealer-factory relationship has improved during recent years, and substantially in recent months. Our reciprocal responsibilities are familiar to both of us.

The automobile business today employs more people than any other in the United States. Neither the factory, the dealer, their employees, or anybody else can afford to gamble on this legislative experiment in such a far-reaching industry.

In the automobile business we have always been able to work our way out of difficulties without governmental intervention, and after many meetings, much discussion, and a great deal of study and consideration with fellow dealers from every section of the United States, I feel sure that any factory-dealer problem we have today can again be resolved by discussion, negotiation, and arbitration, rather than by the passage of legislation.

It is my opinion that, if the O'Mahoney bill becomes law, the automobile bootlegger will be able to thrive and prosper, to our detriment, as never before. Because, under the provisions of the bill, no one will be in a position to take any effective action against bootlegging and other unethical practices.

It is my opinion that, if the O'Mahoney bill becomes a law, the manufacturers may well be forced to seek entirely new methods of distribution, selling, and servicing the cars and trucks they make, methods that could seriously affect the very existence of authorized dealerships.

It is my opinion that the O'Mahoney bill falls completely to meet the objectives of those who, several months ago, set out in all sincerity to cure certain recognized evils in our business.

I urge that you gentlemen withhold all action for the present on this legislation, until all dealers have had the opportunity to express their views. As evidenced by two documents I wish to present to this committee, this has not been the case.

For these reasons and because of my firm belief in the free-enterprise way of doing business, without governmental intervention, I heartily recommend that this bill does not become law.

The CHAIRMAN. What is your name, sir?

Mr. DANNER. Danner, Mr. Chairman.

STATEMENT OF RICHARD G. DANNER, FORT WORTH, TEX.

The CHAIRMAN. Is there anything additional that we haven't heard that you want to contribute to this?

Mr. DANNER. I want to say this, I have not attended any meeting in Dearborn, I was not present there. I have been opposed to this legislation since it was first brought up. I am not a member of NADA. My objection to it stems from the one fact that, as has been brought out here many times, I think we are in the best position to handle our relationship with our factories. I think the committee hearings have created all the possible good that can be accomplished.

I don't think that there is any great public good that can be accomplished by legislation. I think we have a pressure group that is trying to create a Frankenstein, that the factory and the dealers are at each other's throats. I don't think that is true. I don't think legislation would serve any public good. I think if anything in this bill becomes law, we will see the price of cars going up, due to a drop in production, and that the public will pay the bill. I am not a member of any association, other than our local dealers' association in Fort Worth, Tex.

The CHAIRMAN. Have you a statement?

Mr. DANNER. Yes, sir.

The CHAIRMAN. We will accept your statement for the record.

(The prepared statement of Mr. Danner is as follows:)

STATEMENT OF RICHARD G. DANNER

My name is Richard G. Danner. I am a Ford dealer in Fort Worth, Tex., where I have been operating for the past 3 years. Prior to that time, I operated my own Ford dealership in Florida. I started as a small dealer and I went to Fort Worth because of the greater opportunities offered by a large dealership.

I operate my business on a volume basis, having found through experience that profit potential through volume selling is much greater than that that can be realized from "controlled sales," whereby we hold out for a fixed profit on each deal and would not sell the car for less. In other words, we find it easier to sell 10 cars at a small profit than to sell 1 car at a large profit.

I have always enjoyed the best of relationships with the Ford Motor Co., feeling that ours is a give-and-take sort of business. I have never been subjected to any actions that I would consider in the nature of threats. Nor have they ever attempted to coerce me or intimidate me into doing anything which I was reluctant to do.

We must realize that the Ford Motor Co. representatives have essentially a selling job to do, and I suppose their best fieldmen invariably are their best salesmen. I think it is reasonable to assume that occasionally the manufacturers' representatives in the automobile industry, because of their inability to do a selling job on a dealer, might resort to threats, but I think such instances would not be tolerated by the higher executives of the manufacturer.

I have very carefully studied the proposed legislation now before the Congress and I feel that it would be a very serious mistake for Congress, or any other legislative group, to step in and attempt to regulate the automobile industry, either at the manufacturing level or at the retailing or dealer level. There is no question but that dealers in recent years have been subjected to some pretty tough competitive times. Those dealers whose organizations were geared to meet competition have been able to take this pretty much in stride. Those that were not geared up have found it difficult to operate profitably, and I am afraid that many dealers of this type have turned to their legislatures, or now to Congress in a vain attempt to legislate business into their showrooms. This, I believe, is a vain hope, and I do not believe that it will ever be accomplished. Ours is, by nature, a very competitive business. It is certainly an example of the free enterprise system in operation. To bring legislation into play now would only, in my opinion, serve to eliminate much of the competition that now exists. Dealers could get together and jointly resist the sales efforts of the manufacturers—agree to order fewer cars, create a scarcity and maintain higher prices. Efforts by the manufacturers to combat this would bring charges of coercion and intimidation under these bills.

I think if these bills were enacted the manufacturers would, as a matter of self-defense, have to spell out in their sales agreements every conceivable action, duty, responsibility, obligation, etc., that could possibly arise. They would have to do this to defend themselves against possible lawsuits arising from misunderstandings or vague dealings. I, personally, would not want to be penalized by having to operate under such an agreement. It would probably mean that we could no longer sit down with sales representatives of the companies and work out programs, nor could we turn to them for advice and help should the occasion arise. For I think that if I were in the manufacturer's place and this bill became law, I would of necessity deal with my dealer organization at arm's length, possibly with our attorneys present and with a stenographer taking down the entire meeting.

I have had experience in the Government, and for 10 years was an employee of the FBI and the Department of Justice. I am an attorney by training. I feel certain that if this type of legislation became law, it would be only but a short time until amendments and other laws were passed to close loopholes and gaps, with the inevitable result that our business will wind up being regulated by the Government in such a manner as to completely destroy the independence of the automobile dealer. This would tend to remove free competition from our business and would place us in a straitjacket.

I further do not think that our problems are of sufficient public interest to warrant legislation. As a matter of fact, I believe that, rather than protecting the public interest, this legislation would lead inevitably to higher prices being paid by the public for automobiles and automobile service. It would remove the opportunity for a large number of people to buy new cars.

I believe the hearings which have been conducted here in Washington have served a very useful purpose. They have brought to light, and to the attention of the automobile manufacturing executives, situations and problems affecting dealers that probably they never knew before. The fact that all manufacturers have taken immediate steps to correct abuses which have crept into the business is clear evidence to me of good faith on their part. I think that all the good that previously could have been accomplished by legislation has now been accomplished voluntarily. Therefore, any need for legislation at this point has disappeared.

I sincerely hope that this committee will now close the door on a job well done and will wait to see the results of the developments and changes in the factory-dealer relationships in the past few months.

The CHAIRMAN. Mr. Mathews, is there anything you want to add to what we have heard?

STATEMENT OF ROBERT S. MATHEWS, ATHENS, OHIO

Mr. MATHEWS. Yes, Mr. Chairman; I would like to say that before I was in Detroit or Dearborn at the meeting called by Mr. Ford, before that time I happened to represent the organizations of about 25 Ford and Lincoln and Mercury dealerships. And before that time

our people were happy with what NADA was trying to do—of which we are members—in most all of the cases and felt that a lot had been accomplished through investigation, and we were pretty happy about the situation. But after the conference we had there, not only with members of the Ford Motor Co. but our own group of dealers, and found that many dealers of that caliber feeling like they did, all of us, 100 percent, went back and talked to our dealers in our own districts—I did——

The CHAIRMAN. That was all after the Dearborn meeting?

Mr. MATHEWS. That is right, sir, and I was told 100 percent and felt convinced that we should not have this legislation——

The CHAIRMAN. Did you express yourselves, were you articulate as to your opposition to this legislation before you went to Dearborn?

Mr. MATHEWS. I thought from what I knew of it——

The CHAIRMAN. Did you express yourselves to anybody?

Mr. MATHEWS. Not anybody in particular other than within our own organization.

The CHAIRMAN. It was after the Dearborn meeting that you became vocal in your opposition?

Mr. MATHEWS. That is right, because I did not understand the implication of it.

The CHAIRMAN. Do you have a statement?

Mr. MATHEWS. Yes.

The CHAIRMAN. We will receive that in the record.

(The prepared statement of Robert S. Mathews is as follows:)

STATEMENT BY ROBERT S. MATHEWS

My name is Robert S. Mathews, president, owner, and general manager of Beasley & Mathews, Inc., Athens, Ohio.

I requested permission to come before this committee to give you the facts as I see them as to why the Celler bill, and the O'Mahoney bill, S. 3879, should not be passed.

I have been in the Ford business for 19 years, starting as a salesman. My father-in-law, Fred R. Beasley, of Athens, Ohio, started in the Ford business 43 years ago. Our family now has financial interest in 25 Ford Motor Co. automobile and truck agencies in Ohio, West Virginia, Kentucky, and Pennsylvania. We have had our ups and downs in this business. There have been times when we felt that we were not being treated quite fairly in our relations with the factory, but all in all it has been very satisfactory.

I do believe that the congressional investigations, by committees in both the House and the Senate, have helped out in some respects. I suppose that in the past there have been some situations in which a manufacturer used capricious reasons for terminating a dealer's franchise or for failing to renew it. However, the new contracts which the factories are working up will help to clear up that situation. In the case of Ford Motor Co., dealers will be offered a choice between going on with present type of contract, or accepting a new 5-year contract which can be canceled only for cause. If the companies are willing to work with dealers to eliminate the types of abuses that may have occurred in the past, then I see no reason to put the companies in a legal straitjacket. I want our industry to stay strong and vigorous.

I also believe that with Mr. Benson Ford in the new position of chairman of the dealer-factory relations committee, we dealers will have a pipeline to Detroit, so to speak.

In the operations of our companies, some of which are wholly owned, some of which are partnerships, and some of which are partially owned, I do not know of any case where in the past few years we have had any difficulty in getting along with the Ford Motor Co. where we had proper management. We have some problems today in our organization which I feel are up to us to straighten out.

I have talked to a great number of Ford dealers and I believe the great majority of them feel pretty much as I do about this situation.

I do appreciate this opportunity of appearing before you, and I hope that I have made myself clear.

The CHAIRMAN. Now, will you identify yourself, sir?

STATEMENT OF T. H. TUPMAN, LOS ANGELES, CALIF.

Mr. TUPMAN. I am Mr. Tupman from Los Angeles. I want to substantiate what Holmes Tuttle said. I have a prepared statement, and I was not influenced by any meeting of the Ford Motor Co. I have been a successful dealer for 16 years without Federal regulation of any kind, and I certainly am not in favor of any. I think it penalizes the successful dealer in a futile attempt to help the unsuccessful dealer. And I think it is a step toward taking the word "free" out of free enterprise.

The CHAIRMAN. Thank you very much. We will accept your statement in the record.

(The prepared statement of Mr. T. H. Tupman is as follows:)

STATEMENT OF T. H. TUPMAN

My name is T. H. Tupman. I have represented the Ford Motor Co. as an authorized dealer since 1916 in Los Angeles at the same location. I feel that I have been a successful dealer so far as the public is concerned in that I am now retailing cars to customers in the third generation of the same families.

Financially, I started out with an investment of \$8,000, \$4,000 of which was borrowed capital. I mention this fact merely to cite that I started as a little dealer and by accepting factory recommendations and having at all times harmonious relations with the factory my net worth today is approximately \$2½ million. I merely make this statement to prove the fact, which I firmly believe, that factory suggestions and regulations of dealerships have been sound.

I, therefore, feel that any legislation which interferes with the traditional relationship between dealers and their factories is unnecessary and could prove harmful to legitimate and successful dealers. No law passed by Congress is likely to give an unsound business operator a sound business. No law will put ethics into an unethical operation. However, efforts to legislate sound business practices, efforts to legislate ethics into an unethical operator, could place unnecessary handicaps on successful and honest dealers.

In my opinion, most of the dealers who have recently found factory relationships unsatisfactory are, in the majority, dealers who entered the automobile business after World War II, when it took no particular knowledge of the business to operate on a profitable basis. Many of them withdrew their profits from the business and now find it difficult to operate successfully, mainly due to lack of capital. But rather than admit their own mistakes, they are seeking to place the blame for the fact that they may now be operating at a loss solely on the factory.

I feel that any legislation which would inject the Federal Government into a retail business that has proven so successful for thousands of dealers would greatly handicap successful dealers. I feel certain that it would not help unsuccessful dealers and that it would certainly be a definite step toward removing "free" from what we now call free enterprise.

The CHAIRMAN. There will also be received in the record a letter addressed to me from the Department of Justice by Stanley N. Barnes, Assistant Attorney General, with the attached communications from the Department of Justice over the signature of Warren Olney III, Acting Deputy Attorney General, dated June 25, 1956.

(The communications referred to and attachments are as follows:)

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, June 25, 1956.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN CELLER: This is in response to your request for this Department's views on H. R. 11360.

Section 2 of the bill specifies that "[a]ny automobile manufacturer engaged in commerce who makes or grants any franchise to an automobile dealer shall have the duty to act in good faith in all dealings or transactions with such dealer."

Supplementing section 2, section 3 provides "an automobile dealer" may sue any manufacturer for double damages, plus cost of suit and attorney's fees, "sustained * * * by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer."

Finally, section 1 (e) defines "good faith" as:

* * * the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule, we continue to oppose special legislation applying to any one industry.

Beyond that, further comment is complicated by the bill's extremely broad wording. Principal questions stem from the construction of section 1 (e)'s definition of "good faith."

Initially, the manufacturer is obliged, upon pain of double damages, to "guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation * * * ." While we are opposed to the coercion of any dealers, including automobile dealers, to accept products for resale, this practice may be at present an unfair method of competition under the Federal Trade Commission Act. By making specific in section 1 (e) by definition of "good faith," the illegality of such a practice only by automobile manufacturers described in section 2, the bill, if enacted, might cause courts to question the illegality of the practice in other industries. Subject to this word of caution, I would not oppose the enactment of a bill to outlaw coercion. (See *e. g.*, *International Salt Co. v. United States*, 332 U. S. 302 (1947); *Standard Oil of California v. United States*, 337 U. S. 293 (1949).)

H. R. 11360 does more. The manufacturer is made liable for "coercion, intimidation, or threats of" same not only by himself, but also, for instance, by his distributors—whether or not they are subject to his control. Thus, bill section 1 (a) defines "manufacturer" to include "any person, partnership, or corporation which acts for such manufacturer or assembler in connection with the distribution of said automotive vehicles." Section 1 (e), in addition, defines "good faith" broadly to include the manufacturer's "duty * * * to guarantee the dealer freedom from coercion," etc. The source from which this "coercion" may come, I emphasize, is no way limited by the bill. Apparently, then, this language obliges the manufacturer, on pain of double damages, to protect his dealer from any "coercion"—regardless of the source.

Also specified by section 1 (e) as part of the manufacturer's "good faith" obligation is the duty to "protect all the equities of the automobile dealer" which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer. Antitrust difficulties here, too, are immediately apparent. In light of auto industry history, for example, the term "equities of the dealer" might well include the dealer's right to be free from competition from added franchise dealers. As I understand it, one major auto manufacturer's policy now is to permit appeal to its dealer relations board from any sales manager's decisions which affect "the equities of the dealer." Within this language, appointment of an additional dealer in a dealer's area has con-

sistently been deemed a matter warranting appeal. Appointment of added dealers in an area, however, is but one normal competitive means for securing better distribution. As a result, this language might deprive newcomers of their fair chance to enter the auto dealer business and, in the process, seriously restrain distribution of new cars.

Even more broadly, this phrasing could be read to require a manufacturer to guarantee against a dealer's unprofitable operation or depletion of investment. The report on the companion Senate bill, for example, emphasizes throughout this bill's concern for the dealer's franchise investment.¹ After remarking on the "substantial investment of his own personal funds by the dealer in the business," the report, on page 2, states the dealer "becomes in a real sense the economic captive of the manufacturer." Building on this analysis, the report concludes (p. 5):

The economic facts underlying the relationship between manufacturer and dealer justify the imposition upon the factory of duties of a fiduciary or quasi-fiduciary character * * *. Under these circumstances, it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character.

Against this background it seems reasonable to conclude that the Senate committee at least intended that dealers' "equities" include some safeguard for dealers' margins of profit or investment. Section 3 would apply this standard to any "terminating, canceling, or not renewing" of a dealer's franchise.² Any failure to renew, it seems clear, might drastically deplete a dealer's investment. Similarly, an increase in auto production might mean harder competition among dealers but a lower return for any one dealer. From this it follows that H. R. 11360, like its counterpart, as introduced in the Senate, could oblige a manufacturer, I repeat, on pain of double damages, to gear his production and distribution to preserve each dealer's profitable investment.

Thus building for dealers a sanctuary from the rigors of competition seems at odds with basic principles of antitrust. It could effectively prevent manufacturers from responding with production or price changes to the stimuli of a free market. The result might be artificially to recreate as a permanent condition in the retailing of automobiles postwar shortages and prices still fresh in the minds of many. Completely frustrated would be that public interest in more and better products, as well as rival distribution methods which competition is meant to safeguard.

Finally, this language may raise constitutional problems. The bill no way limits the time from which damages may run. Thus, for example, dealer-manufacturer contracts presently in force might be held not to "protect all the equities of the automobile dealer." Even though the manufacturer complied strictly with present contract terms, he still could be sued by a dealer—the day this bill became law—and subjected to punitive damages for past acts not illegal when committed.

For all these reasons, I am unable to recommend enactment of this bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WARREN OLNEY III,
Acting Deputy Attorney General.

DEPARTMENT OF JUSTICE,
Washington, June 25, 1956.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN CELLER: I have your letter dated June 21, 1956. There you refer to H. R. 11360 and S. 3879 and state that "the subcommittee is very much interested in obtaining * * * [my] views concerning this bill and cordially invites * * * [me] to testify on July 2, 10 a. m., room 346, old House Office Building."

¹ S. Rept. 2073, 84th Cong., 2d sess.

² Acknowledging the possibility that a manufacturer may fail to renew a dealer contract only on pain of double damages, the report, p. 6, states: "The bill would not permanently bind a manufacturer to his dealer. The dealer, in case of nonrenewal, has no right to require continuance of the relationship. He merely has a right to damages if the factory failed to act in good faith in refusing to renew the franchise."

Initially, this Department's detailed comments on H. R. 11360, dated June 25, 1956, you already have. Beyond that, I enclose a copy of this Department's comments on S. 3879, dated June 13, 1956, addressed to Senator O'Mahoney. Finally, more generally, I enclose comments on a related bill, S. 3946, as well as my statement on a revised version of that bill. This should cover Department of Justice views on the bills before you as well as related dealer problems.

S. 3879, however, was amended on the Senate floor in three ways. First, section 1 (e) was broadened to include within "good faith" a "duty," not only on the manufacturer, but on "each party to any franchise." Correspondingly, bill section 3, now renumbered section 2, was amended to insure "that in any such suit the manufacturer shall not be barred from asserting in defense * * * the failure of the dealer to act in good faith." The bill sponsor, however, concluded these amendments made no substantive change. Thus, referring to S. 3879 before these amendments, Senator O'Mahoney stated, "Under the bill, good faith is a matter for the jury to determine, and the manufacturer is perfectly free to introduce any evidence whatsoever with respect to the lack of good faith on the part of the dealer. If there should be such, that would be a defense, without the slightest doubt."¹ Again, later in debate, referring to the unamended bill, Senator O'Mahoney assured the obligation of good faith already "does refer to both parties; it could not be otherwise."²

Second, section 2 of the bill, as introduced, was stricken. Here, too, however, the bill's sponsor concluded this amendment made no substantive change. Thus, Senator O'Mahoney stated:

"I would be willing, even, to go so far as to strike out section 2 altogether.

"Mr. CASE of New Jersey. It is sort of redundant.

"Mr. O'MAHONEY. Because, as the Senator from New Jersey says, it is sort of redundant."³

Again, later in discussion, Senator O'Mahoney repeated section 2 "is redundant; it is surplusage."⁴

Finally, the language "twofold" in former section 3, now section 2, was stricken. In its place the word "compensatory" was inserted.⁵ Apparently, then, this alternation, not in substance, but solely in remedy is the prime amendment by the Senate.

With this in mind, this Department's comments on the substance of H. R. 11360 as well as S. 3946 set forth in full whatever views I might present before your committee. In addition, I am leaving town today to attend the Ninth Judicial Conference in San Francisco. I cannot return until next weekend. Monday will be my last full day on the job as Assistant Attorney General and, as I am sure you can understand, I would like very much to be able to clean up my desk. Accordingly, I would prefer not to appear before your committee July 2.

Thank you very much for your consideration in this matter.

Sincerely yours,

STANLEY N. BARNES,
Assistant Attorney General, Antitrust Division.

JUNE 13, 1956.

HON. WARREN G. MAGNUSON,
*Chairman, Interstate and Foreign Commerce Committee,
United States Senate, Washington, D. C.*

DEAR SENATOR MAGNUSON: This letter is in response to your request for this Department's views on S. 3946 (84th Cong., 2d sess.).

That measure would amend section 17 of the Federal Trade Commission Act to declare it an unfair method of competition:

(a) For a manufacturer of motor vehicles to coerce its dealers to order or accept for delivery any product;

(b) For a dealer to sell a new motor vehicle to anyone other than another dealer of the same manufacturer for resale in competition with such dealer without first affording the manufacturer an opportunity to repurchase the motor vehicle; and for a manufacturer to refuse to repurchase such motor vehicle under a plan adopted by such manufacturer which is equitable to all dealers and consistent with such manufacturers financial resources;

¹ 102 Congressional Record 9516 (June 19, 1956).

² *Ibid.*, p. 9516.

³ *Ibid.*, p. 9530.

⁴ *Ibid.*, p. 9531.

⁵ *Ibid.*, p. 9533.

(c) For a motor vehicle manufacturer to represent or require that warranties will be fulfilled and services rendered by all of its dealers without adequately compensating them for the required services;

(d) For a motor vehicle manufacturer to cancel the franchise of any dealer unless (1) the contract between them contains mutually binding obligations and (2) the dealer has failed to perform one or more of his contractual obligations;

(e) For a manufacturer of motor vehicles to terminate the franchise of any dealer without agreeing "to effectuate an equitable liquidation" of the dealer's assets.

I

This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule we continue to oppose special legislation applying to any one industry.

II

This bill also represents a departure from the statutory scheme on which section 5 of the Federal Trade Commission Act was based. The act contemplated that the Federal Trade Commission rather than Congress would determine on a case-by-case basis, utilizing its experience and skill in the field of trade regulation, those practices that constitute unfair methods of competition. See *Federal Trade Commission v. Beechnut Packing Company* (257 U. S. 441). The dangers to uniform and effective enforcement such departures pose cannot be too strongly emphasized.

III

(a) While we are opposed to the coercion of any dealers, including automobile dealers, to accept products for delivery, this practice may be at present an unfair method of competition under the Federal Trade Commission Act. By making specific in subsection (1) of this bill the illegality of such a practice only in the automobile industry, the bill if enacted, might cause courts to question the illegality of the practice in other industries. Subject to this word of caution, I would not oppose the enactment of subsection (1).

(b) I cannot recommend the enactment of subsection (2) of this bill because it would legalize the type of restraint on alienation which we believe to be unlawful. The Department of Justice declined to waive criminal prosecution with respect to a similar proposal which was submitted to us by General Motors in 1954. This subsection would legalize practices which constitute a boycott by new-car dealers of nonfranchised dealers. The bill would also sanction a device for stabilizing prices at the retail level in the automobile industry. In addition, by relating the repurchase plan to "the financial resources" of each manufacturer the bill would appear to discriminate against dealers of the smaller manufacturers. Finally, the determination of which plans are "consistent" with the manufacturer's financial resources will undoubtedly raise complicated questions of fact. The bill contains no guide to answer these questions. For all of these reasons the Antitrust Division is strongly opposed to subsection (2).

(c) Comment on proposed subsection 3 is complicated by the variety of plans that might fit within its terms. On the one hand a "reasonable system of compensating all of its dealers" may imply payments, not by a selling dealer but simply by a manufacturer. This sort of arrangement would raise no antitrust problems. Accordingly, if subsection 3 be read to permit a plan only for compensation by the manufacturer, this Department offers no objection to its enactment.

However, the "reasonable system" for compensation might involve payments by a selling dealer to the servicing dealer in whose territory a new-car purchaser resides. To such a plan (voluntarily entered into between the dealer and the manufacturer) this Department would interpose no objection—so long as the amount paid by the selling dealer did not exceed that portion of the servicing dealer's required warranty costs not already paid for by the manufacturer or the car owner. To the extent such payments exceed nonreimbursed costs for required warranty service however, they penalize out of territory sales and tend to create a division of territories among dealers—a probable violation of the antitrust laws. Accordingly, were such a penalty plan to be advocated

as a "reasonable system" within the meaning of proposed subsection 3, then this Department would oppose enactment of that provision.

(d) We favor the enactment of legislation which would have the effect of requiring motor-vehicle manufacturers to enter into mutually binding contracts with their dealers and which would prevent manufacturers from terminating the franchise of a dealer except for failure to adhere to his contractual obligations. Subsection (4), however, would appear to prevent the termination of any existing dealer contract which did not contain the provisions specified in this bill. To the extent that the bill modifies obligations under existing contracts, it raises serious constitutional questions. The Antitrust Division would not, however, oppose a bill which required motor-vehicle manufacturers to incorporate the termination provisions set out in this bill in any contract entered into after its effective date, except for the fact that it would constitute governmental regulation of private contract.

(e) Insofar as subsection (5) requires the manufacturer to "effectuate" the liquidation of a dealer's assets upon termination of his franchise, it would appear to place the whole responsibility for liquidation on the manufacturer. The Antitrust Division would not oppose a requirement that the manufacturer assist the dealer to liquidate his assets but cannot recommend the enactment of legislation which would, in effect, require the manufacturer to indemnify the dealer for any loss resulting from liquidation of his assets.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

JUNE 13, 1956.

HON. JOSEPH C. O'MAHONEY,

Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, United States Senate, Washington, D. C.

DEAR SENATOR O'MAHONEY: This is in response to your request for this Department's views on S. 3879 (84th Cong., 2d sess.). That bill was introduced May 18, 1956, referred to the Senate Judiciary Committee, and reported out favorably, without hearings, June 4 of this year.

Section 2 of the bill specifies that "[a]ny automobile manufacturer engaged in commerce who makes or grants any franchise to an automobile dealer shall have the duty to act in good faith in all dealings or transactions with such dealer."

Supplementing section 2, section 3 provides "an automobile dealer" may sue any manufacturer for double damages, plus cost of suit and attorney's fees, "sustained * * * by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer."

Finally, section 1 (e) defines "good faith" as:

* * * the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

This bill is special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule we continue to oppose special legislation applying to any one industry.

Beyond that, comment on the bill's extremely broad wording is complicated by the absence of that public discussion and analysis which hearings would likely evoke. Principal questions stem from the construction of section 1 (e)'s definition of "good faith."

Initially, the manufacturer is obliged, upon pain of double damages, to "guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation * * *." While we are opposed to the coercion of any dealers, including automobile dealers, to accept products for resale, this practice may be at present an unfair method of competition under the Federal Trade Commission Act. By making specific in section 1 (e) by definition of "good faith," the illegality of such a practice only by automobile manufacturers described in section 2, the bill, if enacted, might cause courts to question the illegality of the practice

in other industries. Subject to this word of caution, I would not oppose the enactment of a bill to outlaw coercion. (See e. g., *International Salt Co. v. United States*, 332 U. S. 392 (1947); *Standard Oil of California v. United States*, 337 U. S. 293 (1949).)

S. 3879 does more. The manufacturer is made liable for "coercion, intimidation, or threats of" the same not only by himself, but also, for instance, by his distributors—whether or not they are subject to his control. Thus, bill section 1 (a) defines "manufacturer" to include "any person, partnership, or corporation which acts for such manufacturer or assembler in connection with the distribution of said automotive vehicles." Section 1 (e), in addition, defines "good faith" broadly to include the manufacturer's "duty * * * to guarantee the dealer freedom from coercion," etc. The source from which this "coercion" may come, I emphasize, is no way limited by the bill. Apparently, then, this language obliges the manufacturer, on pain of double damages, to protect his dealer from any "coercion"—regardless of the source.

Also specified by section 1 (e) as part of the manufacturer's "good faith" obligation is the duty to "protect all the equities of the automobile dealer which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer." Antitrust difficulties here, too, are immediately apparent. In light of auto industry history, for example, the term "equities of the dealer" might well include the dealer's right to be free from competition from added franchise dealers. As I understand it, one major auto manufacturer's policy now is to permit appeal to its dealer relations board from any sales manager's decisions which affect "the equities of the dealer." Within this language, appointment of an additional dealer in a dealer's area has consistently been deemed a matter warranting appeal. Appointment of added dealers in an area, however, is but one normal competitive means for securing better distribution. As a result, this language might deprive newcomers of their fair chance to enter the auto dealer business and, in the process, seriously restrain distribution of new cars.

Even more broadly, this phrasing could be read to require a manufacturer to guarantee against a dealer's unprofitable operation or depletion of investment. The report, for example, emphasizes throughout this bill's concern for the dealer's franchise investment.¹ After remarking on the "substantial investment of his own personal funds by the dealer in the business," the report, on page 2, states the dealer "becomes in a real sense the economic captive of the manufacturer." Building on this analysis, the report concludes (p. 5):

"The economic facts underlying the relationship between manufacturer and dealer justify the imposition upon the factory of duties of a fiduciary or quasi-fiduciary character * * *. Under these circumstances, it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character."

Against this background, it seems reasonable to conclude that the committee intended that dealers' "equities" include some safeguard for dealers' margins of profit or investment. Section 3 would apply this standard to any "terminating, canceling, or not renewing" of a dealer's franchise. Any failure to renew, it seems clear, might drastically deplete a dealer's investment. Similarly, an increase in auto production might mean harder competition among dealers but a lower return for any one dealer. From this it follows that S. 3879 could oblige a manufacturer, repeat, on pain of double damages, to gear his production and distribution to preserve each other's profitable investment.

Thus building for dealers a sanctuary from the rigors of competition seems at odds with basic principles of antitrust. It could effectively prevent manufacturers from responding with production or price changes to the stimuli of a free market. The result might be artificially to re-create as a permanent condition in the retailing of automobiles postwar shortages and prices still fresh in the minds of many. Completely frustrated would be that public interest in more and better products, as well as rival distribution methods which competition is meant to safeguard.

Finally, this language may raise constitutional problems. The bill noway limits the time from which damages may run. Thus, for example, dealer-

¹ S. Rept. 2073, 84th Cong., 2d sess.

² Acknowledging the possibility that a manufacturer may fail to renew a dealer contract only on pain of double damages, the report, p. 6, states: "The bill would not permanently bind a manufacturer to his dealer. The dealer, in case of nonrenewal, has no right to require continuance of the relationship. He merely has a right to damages if the factory failed to act in good faith in refusing to renew the franchise."

manufacturer contracts presently in force might be held not to "protect all the equities of the automobile dealer." Even though the manufacturer complied strictly with present contract terms, he still could be sued by a dealer—the day this bill became law—and subjected to punitive damages for past acts not illegal when committed.

For all these reasons, I am unable to recommend enactment of this bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

STATEMENT BY STANLEY N. BARNES, ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE ANTITRUST DIVISION, RE COMMITTEE PRINT, DATED JUNE 18, 1956, OF S. 3946

I appear today at the request of your chairman to present this Department's views on a committee print, dated June 18, 1956, of S. 3946. On June 13, 1956, this Department submitted its views on an earlier version of S. 3946. For the sake of completeness, I submit that letter for your record. Against this background, my comments today will be limited to the revised bill.

That revised bill would add a new section 17 to the Federal Trade Commission Act. This new section would make it an unfair method of competition under Federal Trade Commission Act section 5: First, "for a manufacturer of motor vehicles to induce by means of coercion, intimidation, or discrimination any of its dealers to order or accept for delivery any product of any kind"; second, "for a dealer knowingly to sell other than to another dealer of such manufacturer a new motor vehicle for resale as a new motor vehicle in competition, with other dealers of such manufacturer without first affording such manufacturer an opportunity to repurchase such motor vehicle at the price paid therefor"; third, "for any manufacturer of motor vehicles to hold out or require that warranties will be fulfilled and services rendered by all of its dealers, without effectuating a reasonable system of compensating all of its dealers, for fulfilling such warranties and rendering such services"; fourth, "for any manufacturer of motor vehicles, without the consent of the dealer concerned, to cancel the privilege or right of any of its dealers to sell the products of such manufacturer, unless— (A) the contract, agreement, or arrangement governing the dealership contains mutually agreed upon standards by reference to which the duties and obligations of the dealer under such contract, agreement, or arrangement may be determined; and (B) the dealer has failed to perform in a reasonable manner one or more of such duties and obligations"; finally, S. 3946, as revised, would make it an unfair method of competition "for any manufacturer of motor vehicles to cancel, terminate, or fail to renew the privilege or right of any dealer to sell the products of such manufacturer without effectuating a reasonable system to assist in the equitable liquidation of the assets reasonably attendant to the operation of the dealership."

As revised, this bill continues to be special legislation limited solely to the distribution of automobiles. This Department has previously objected to the enactment of legislation limited to single industries. As a general rule we continue to oppose special legislation applying to any one industry.

This bill also represents a departure from the statutory scheme on which section 5 of the Federal Trade Commission Act was based. The act contemplated that the Federal Trade Commission rather than Congress would determine on a case-by-case basis, utilizing its experience and skill in the field of trade regulation, those practices that constitute unfair methods of competition. (See *Federal Trade Commission v. Beechnut Packing Company*, 257 U. S. 441 (1922)). The dangers to uniform and effective enforcement such departure poses cannot be too strongly emphasized.

These general objections aside, I turn to the revised bill's specific provisions. We, of course, endorse the general purpose of new section 17 (a) (1). Clearly, we oppose the "coercion" of any dealers to accept products for delivery. Such coercion, however, may already transgress the antitrust laws where it has substantial anticompetitive effects. Coercion aimed, for example, to secure a "tying" or exclusive dealing arrangement has long been held to violate Sherman Act section 1 or Clayton Act section 3 where a substantial amount of commerce is involved. (See, e. g., *International Salt Co. v. United States*, 332 U. S. 392

(1947) ; *Times-Picayune Publishing Co. v. United States*, 345 U. S. 594, 608-609, 611 (1953) ; *Standard Oil of California v. United States*, 337 U. S. 293 (1949)). In addition, systematic coercion aimed at "full-line forcing" likewise may transgress Federal Trade Commission Act Section 5. (See, e. g., *Federal Trade Commission v. Gratz*, 253 U. S. 421 (1920) ; see, also, Federal Trade Commission complaint *In the Matter of the Goodyear Tire and Rubber Company and the Atlantic Refining Company*, Docket No. 6486.) By specifying the illegality of "coercion" only in the auto industry, the bill, if enacted, might cause courts to question the illegality of like practices in other industries. Subject to this important word of caution, this Department would not oppose enactment of subsection 1.

I cannot recommend, however, enactment of proposed subsection 2 which makes it an unfair method of competition "for a dealer knowingly to sell other than to another dealer * * * a new motor vehicle for resale as a new motor vehicle * * * without first affording such manufacturer an opportunity to repurchase such motor vehicle at the price paid therefor."

This provision apparently seeks to restrict so-called "bootlegging." In that effort, this provision, if enacted, might well succeed. First, by forcing each dealer, on pain of an FTC cease and desist order, to offer new cars for resale first to the manufacturer, it gives the manufacturer the power to stop bootlegging, and thus stabilize prices, in any area. Second, even if a manufacturer decides not to repurchase, this provision would nevertheless pinpoint "bootlegging" dealers. Manufacturers might, then, either cut down the "bootlegging" dealers supply of cars or even risk antitrust violation by canceling or refusing to renew a "bootlegger's" franchise. In either event, "bootlegging" might effectively be cramped.

This provision is in effect on all fours with a proposed contract clause submitted by General Motors to this Department on March 22, 1954. This clause would have required General Motors dealers to refrain from selling at wholesale any current model GM vehicle without first offering to resell the vehicle to General Motors. Regarding this proposal, I wrote the general counsel of General Motors, March 30, 1954 :

"* * * we have carefully reviewed the statements contained in your letter and the provisions intended to be incorporated into future selling agreements between General Motors Corp. and its franchised dealers. We have concluded that the Department of Justice cannot undertake to waive the institution of criminal proceedings with respect to such contractual provisions should we decide to test their legality if they are incorporated in General Motors Corp. selling agreements, since they raise important questions under the antitrust laws."

Proposed subsection 2 may go even beyond the General Motors proposal we refused to approve. Under subsection 2 the Government, not merely the manufacturer, would be charged with enforcing antibootlegging efforts. Such a result seems at odds with basic antitrust principles, for the following two reasons :

First, it would create an unlawful restraint on the trade of franchised dealers with customers of their choice. As the Supreme Court put it in *United States v. Bausch & Lomb Co.* (321 U. S. 707, 721 (1944)) :

"* * * A distributor of a trademarked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell, except as provided by the [fair trade laws]."

Second, this provision, aimed at slowing down or even stopping sale of new automobiles to used-car dealers for resale to the public, might well stabilize new-car prices. Price-fixing is perhaps the clearest violation of the antitrust laws and is prosecuted criminally in all but exceptional cases. For these reasons, then, this Department cannot recommend enactment of subsection 2.

Similarly, we cannot recommend enactment of subsection 3. Many of the same ambiguities in that subsection this Department noted in its June 13, 1956, letter still persist. On the one hand, as that letter pointed out, a "reasonable system of compensating all of its dealers" may imply payments simply by the manufacturer. This sort of arrangement would raise no antitrust problems. Accordingly, if subsection 3 be read simply to cover a plan for compensation only by the manufacturer, this Department offers no objection to its enactment.

However, subsection 3 may do more. Its "reasonable system" for compensation might involve payments by the selling dealer to the servicing dealer in whose territory a new-car purchaser resides. To such a reasonable compensa-

tion plan (voluntarily entered into between the dealer and the manufacturer), this Department, as our June 18th letter indicated, would not object—so long as the amount paid by the selling dealer did not exceed that portion of the servicing dealer's required warranty costs not already paid for by the manufacturer or the car owner.

To the extent such payments exceed nonreimbursed costs for required warranty service, however, they penalize out-of-territory sales and tend to create a division of territories among dealers—a probable violation of the antitrust laws. Such a penalty plan, I emphasize, might well come within subsection 3—for that provision's "reasonable system" of compensation must include "warranties fulfilled and services rendered by all" dealers. Thus, services are not limited to post-sale warranty obligations. Included as well might be the "service" of maintaining a luxurious showroom, expensive advertising, or fine display facilities. Should such a plan be contemplated by proposed subsection 3, then this Department would be required to oppose enactment of that provision.

Regarding proposed subsection 4, we would not oppose legislation to require motor vehicle manufacturers to enter into mutually binding contracts with dealers and prevent termination, except for failure to adhere to contractual obligations. However, proposed subsection 4 may well do more.

This provision restricts the power "of any manufacturers of motor vehicles * * * to cancel the privilege or right of any of its dealers to sell the products of such manufacturer." This language, on the one hand, may include refusal to renew a franchise, as well as termination of a franchise not yet expired. If it does include a refusal to renew, and further, if any existing dealer contracts do not contain "mutually agreed upon standards by reference to which the duties and obligations of the dealer * * * may be determined," then, this provision might effectively freeze the present pattern of dealer distribution. For a manufacturer could threaten not to renew, on pain of a complaint urging a Federal Trade Commission cease-and-desist order. Completely frustrated, then, would be the public interest in fostering new or rival distribution methods which competition is meant to safeguard. It might prevent termination of any existing dealer contracts that do not contain "mutually agreed upon standards." To the extent this provision modifies obligations under existing contracts, it raises serious constitutional questions.

Even were section 4 to apply only to termination contracts entered into after its enactment, objections might still remain. This provision would even then intrude Government into an area traditionally reserved for private contract. To this extent, it would substitute Government regulation for the free market as a means for controlling relations between dealers and manufacturers.

For these reasons, this Department opposes enactment of S. 3946, as revised, as well as the original bill.

The CHAIRMAN. That will terminate the hearings for today. We will reassemble tomorrow in this room at 2:30 p. m.

(Whereupon, at 5:30 p. m., the committee adjourned to reconvene at 2:30 p. m., Tuesday, July 8, 1956.)

AUTOMOBILE DEALER FRANCHISES

TUESDAY, JULY 3, 1956

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 2:30 p. m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the Judiciary Committee) presiding.

Present: Representative Celler.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Harkins, co-counsel; and Thomas H. McGrail, assistant counsel.

The CHAIRMAN. The committee will come to order.

We have 18 witnesses this afternoon. I hope that those who testify will understand the exigencies under which we are laboring. I would not want to hold a meeting as long as I did yesterday. As a matter of fact, members of the committee may be summarily called over to the House for votes on the school construction bill, so I am going to ask those who testify to be as brief and concise as possible.

In the meanwhile, I understand that Admiral Bell wanted to say something. I am going to ask you to be brief, too, Admiral.

FURTHER STATEMENT OF FREDERICK J. BELL, EXECUTIVE VICE PRESIDENT, NATIONAL AUTOMOBILE DEALERS ASSOCIATION

Mr. BELL. I am going to be extremely brief, Mr. Chairman.

The point was made yesterday afternoon by one of the witnesses that the National Automobile Dealers Association had not kept its members informed.

I am not going to burden the record with this [exhibiting documents]. I will make any part of this or all of this available to you or your staff, to the committee—but these are some of the ways [exhibiting documents] in which we have kept members informed on legislative matters in the last 4 or 5 months.

Here are [exhibiting] mailing pieces of June 7 and 8 outlining the O'Mahoney and the Monroney bills; here is a magazine of May in which the entire thing is set forth; here is a quarterly publication, and it is all set forth here, and that was mailed 2 months ago—and so on and so on, down through the line all of these [indicating].

In other words, if any member of the National Automobile Dealers Association is not familiar in great detail with this bill, the only reason that I can advance is that he is either uninterested or does not read his mail. It has been made available to him.

The CHAIRMAN. Counsel will accept those documents. We will not put them in the record.

Mr. BELL. No, sir; of course not. I will make them available.

The CHAIRMAN. Our first witness is Mr. Olin Bell, of Bowling Green, Mo.

Mr. Bell, will you please come forward?

STATEMENT OF OLIN BELL, BELL MOTOR CO., BOWLING GREEN, MO.

Mr. BELL. Mr. Chairman and members of the committee, I have a short prepared statement that I would like to present for the consideration of the committee and with your permission I will do so at this time.

The CHAIRMAN. How long is your statement?

Mr. BELL. It is about 3 pages.

The CHAIRMAN. All right, you may proceed.

Mr. BELL. My name is Olin Bell. I am president of Bell Motor Co. of Bowling Green, Mo., a Ford and Mercury dealership. Bowling Green is a town of 3,000 and was the home of Champ Clark who was a distinguished member of this body for many years. I am speaking for a group of 25 dealers representing various manufacturers in the St. Louis area.

As a small retailer of automobiles I appreciate the opportunity to discuss some of the details of the legislation proposed in H. R. 11360. The very fact that hearings are being held on this legislation would certainly indicate that our duly elected representatives are acting in good faith in the conduct of governmental affairs as they affect our business.

Certainly Ford Motor Co. and all other automobile manufacturers realize better than anyone else the importance of sound and healthy dealer organizations in the distribution of automobiles. The interest of the manufacturers and dealers are obviously parallel and compatible and must operate on a team basis. Any attempt to control business relationships between manufacturer and dealer by legislation is definitely contrary to every accepted standard in the conduct of American business.

The phenomenal growth of the automobile industry has required many adjustments in the general pattern of our business operations. Frankly, all manufacturers have had difficulty or have failed to make some of the adjustments as promptly as desirable, but rapid progress is being made and all recent results indicate that continued negotiations between manufacturers and dealers will resolve our problems to the mutual benefit of all directly concerned.

Admittedly mistakes have been made by overpressurized field representatives of the various manufacturers, but those are human frailties and an entire industry should not suffer because of improprieties on the part of a few individuals. No doubt, such problems are not peculiar to the automobile industry alone.

Is it probable that all business will eventually be controlled by legislation to the minutest detail? If my memory serves me correctly, many individuals now requesting this legislation were highly critical of a previous administration for delaying the removal of regulation W.

The reputation and acceptance of Ford Motor Co. and its products is determined almost entirely by the performance and efficiency of authorized Ford dealers throughout the country. Every manufacturer should have a logical and perfect right to insist on adequate rep-

resentation in all dealerships. Such performance is not accomplished by coercion and intimidation, but by cooperative teamwork.

Ford Motor Co. operates a business-management department from which the services are free to every Ford dealer for the sole purpose of increasing efficiency in dealerships. We use this service and it pays off, but many people would probably interpret this relationship as coercion under certain circumstances.

In our agency we buy the merchandise that we think can be retailed profitably—no more and no less.

It is inconceivable that any manufacturer would appoint a dealer who is not equipped to give adequate service and to fulfill warranties. Likewise, a prospective dealer unable to perform such services is doomed to failure and would not want a franchise with a manufacturer.

Good service and a fair warranty policy is the lifeblood of every successful dealership. Would the necessary guidance by a manufacturer in an overall warranty program be interpreted as coercion? I think it might be. The warranty policy now followed in Ford dealerships is eminently fair to the manufacturer, to the dealer and, more importantly, the customer.

Good service cannot be legislated into a dealer nor can morality or high ethical business practices be legislated into individual dealers or manufacturers. These objectives can be obtained only by intelligent discussion of the problems involved by the parties involved.

We will all agree that arbitrary cancellation of the sales agreement of any dealer is unethical, unnecessary, and downright ruthless, except for undisputed cause. Unquestionably dealers representing all manufacturers, automotive and otherwise, are entitled to fair treatment. The investment of the average automobile dealer is substantial and this investment is certainly endangered if control legislation forces various manufacturers to drastically revise distribution methods.

The automobile industry is necessarily a volume business if the public is to be afforded any protection price-wise under our economy. However, it is my contention that any given dealer and any manufacturer can mutually agree on reasonable standards of volume performance for any given sales area by an intelligent discussion of all the factors involved.

Surely, a third party, wholly uninformed, could not possibly render a worthwhile judgment on this phase of the automobile business. I sincerely believe that the dealer council of Ford dealers and the dealer policy board of Ford Motor Co. can analyze and make any desirable revisions in our relationships in the most satisfactory manner.

I have discussed this legislation with 10 dealers in my immediate vicinity and not one of them favor control legislation in any form. Past experience has taught all of us that hasty legislation is almost invariably bad legislation.

In my opinion, not 20 percent of the dealers in America have any conception of the implications contained in this proposed legislation.

If legislation is needed, I feel positive that H. R. 11360 is not the proper answer. I am equally certain that the automobile industry can cure its growing pains under the system of free enterprise that has made America great.

Imposition of governmental controls as proposed in this bill will, no doubt, be detrimental to the dealer, to the manufacturer, and especially to the public. I hope that H. R. 11360 does not pass.

The CHAIRMAN. Thank you.

Mr. BELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Our next witness is Mr. Robert Wright, of Moultrie, Ga. And I am going to invoke cloture. I will ask each man to confine himself to 5 minutes. Otherwise we will not finish today, and I will have to call back, those who have not testified.

Mr. HOLTSINGER. Mr. Chairman, can I make a statement?

The CHAIRMAN. Yes, sir.

Mr. HOLTSINGER. My name is George Holtsinger. I am a Ford dealer of Tampa, Fla. I understand as a result of a suggestion made by Congressman Keating, of New York—

The CHAIRMAN. Wait a minute. I called Mr. Wright.

Mr. HOLTSINGER. I know that.

He made a suggestion that we present three witnesses here.

The CHAIRMAN. Oh, excuse me.

Mr. HOLTSINGER. May I read the statement?

The CHAIRMAN. How long is the statement?

Mr. HOLTSINGER. Well, the statement is that we put three witnesses on and hear them fully.

The CHAIRMAN. I have got to invoke cloture; otherwise all these people here will have to come back. I do not want to do that.

Mr. HOLTSINGER. If you will let me read that statement, I think you will understand me.

The CHAIRMAN. How many pages have you got there?

Mr. HOLTSINGER. Oh, no; I have just a short statement if you will listen to me.

The CHAIRMAN. All right.

STATEMENT OF GEORGE M. HOLTSINGER, TAMPA, FLA.

Mr. HOLTSINGER. My name is George Holtsinger. I am a Ford dealer, of Tampa, Fla.

I understand that as a result of a suggestion made by Congressman Keating of New York, a member of this committee, you are willing to give a full hearing this afternoon to 3 dealers out of the 12 or 15 who are here with me.

I want to give you the names of the dealers who are with me and then I will introduce to you the three who will read their statements and testify before the committee, if that is satisfactory to you.

The CHAIRMAN. I am sorry—

Mr. HOLTSINGER. Now, if you will hear only three, we want you to hear them and allow them to testify fully.

The CHAIRMAN. That is all right. I did not know that.

In other words, all you gentlemen here have selected three witnesses, and they will testify on behalf of all?

Mr. HOLTSINGER. That is right.

I am chairman of the committee. The other members want to present their statements and file them for the record, but three of them want to read their statements in full and have full testimony.

The CHAIRMAN. I just want it to be understood that you are to appear, you and two—

Mr. HOLTSINGER. I am the chairman of the committee.

The CHAIRMAN. You and the other two will appear and then the others will file their statements?

Mr. HOLTSINGER. That is correct.

The CHAIRMAN. That is a very fine arrangement, and I compliment you on that.

Mr. HOLTSINGER. Thank you, sir.

As I say, my name is George Holtsinger. I am the chairman. The three other gentlemen are B. E. Hohlt, of Granite City, Ill.; Roy O'Brien, of Detroit, Mich.; and Walter McRae, of Jacksonville, Fla.

The other men who will file their statements are R. J. Auffenberg, of Belleville, Ill.; J. O. Barron, Jr., Hattiesburg, Miss.; J. C. Bowen, Forrest City, Ark.; Jack Beasley, Altoona, Pa.; W. C. Currie, Tifton, Ga.; Jack Kelley, Stamford, Conn.—

Mr. MALETZ. Will you go a little bit slower so that we can check these names?

Mr. HOLTSINGER. I will furnish you with the list.

Mr. MALETZ. All right, sir.

Mr. HOLTSINGER. J. H. Kultgen, Waco, Tex.; J. C. Lewis, Savannah, Ga.; Olin Bell, Bowling Green, Mo.; Griner Waters, Lakeland, Fla.; F. M. Scarritt, St. Petersburg, Fla.; and Robert Wright, of Moultrie, Ga.

The CHAIRMAN. That isn't going to help us any, because you have only read a few of the names on our list. Apparently, this is going to prolong it.

Mr. MALETZ. You have listed Fred Collins of Streator, Ill. Is Mr. Collins here?

Mr. COLLINS. That arrangement is satisfactory with me.

Mr. MALETZ. All right. Lewis Boggus, Jr., of Corpus Christi, Tex.?

The CHAIRMAN. Is that arrangement agreeable to you?

Mr. HOLTSINGER. Mr. Boggus is not here.

Mr. MALETZ. Mr. W. E. Dickerson, of Missouri. Is he here?

Mr. HOLTSINGER. He had to go back.

Mr. MALETZ. Mr. Roy O'Brien, of Saint Clair Shores, Mich.

Mr. O'BRIEN. I am a part of Mr. Holtsinger's three.

Mr. MALETZ. I see.

The CHAIRMAN. Are there any other dealers here who have been scheduled to testify and who are not represented by Mr. Holtsinger? (No response.)

The CHAIRMAN. All right, proceed.

Mr. HOLTSINGER. I would like to introduce to you Mr. B. E. Hohlt, of Granite City, Ill., who will make the first statement.

STATEMENT OF B. E. HOHLT, GRANITE CITY, ILL.

Mr. HOHLT. Mr. Chairman and members of the committee, my name is B. E. Hohlt. I have been a Ford dealer for the past 21 years. The last 18 years I have been located in Granite City, Ill., which is directly across the Mississippi River from St. Louis, Mo., 20 minutes from downtown St. Louis.

I appreciate the opportunity of appearing before this committee, and also wish to thank my Congressman for arranging for my appearance.

Mr. Chairman, I would like to make a statement to clear up the point which seems to have caused some confusion in the minds of this committee. After your hearings of yesterday I met with some of the dealers. I was amazed to find out that we dealers were supposed to have been at a meeting in Dearborn for a brainwashing, and also that the company turned them into puppets as Admiral Bell puts it.

I shall have something to say about puppeteering of dealers by Admiral Bell, himself, later on, but right now I want to give you straight facts about what happened in Dearborn.

I was extended an invitation to a meeting at Dearborn by telegram from Henry Ford II. The company offered to pay my expenses. This was not unusual, because I have attended several meetings at Dearborn for which the company has reimbursed my expenses. This meeting convened at 12:30 p. m., but after luncheon—

The CHAIRMAN. Wouldn't you feel a certain sense of obligation if they offered to pay your expenses?

Mr. HOHLT. Not necessarily.

As I say, I have attended several meetings in Dearborn where they have paid my expenses.

The CHAIRMAN. But those meetings did not refer to legislation before the Federal Congress, did they?

Mr. HOHLT. No, but I would pay many times personally what the expenses to Dearborn would be, myself, if I thought it would help to defeat this bill.

This meeting convened at 12:30 p. m., and after luncheon some of the company executives explained the possible implications of the Monroney and O'Mahoney bills, if they become law. Most of the dealers were not familiar with either of these bills. After they had given us their interpretation—

The CHAIRMAN. Pardon me. At this meeting that was held in Dearborn, were there any other dealers besides Ford dealers present?

Mr. HOHLT. No, sir, there would be no reason for any other dealers to meet in Dearborn.

The CHAIRMAN. This was a group meeting of Ford franchise dealers?

Mr. HOHLT. A group meeting of Ford, Lincoln, and Mercury dealers, Mr. Chairman.

The CHAIRMAN. Ford, Lincoln and Mercury dealers?

Mr. HOHLT. Yes, sir.

The CHAIRMAN. This was a meeting called concerning legislation that covers all dealers. The bill before us doesn't refer only to Ford dealers, it refers to all the dealers of all manufacturers of cars.

Mr. HOHLT. I can't speak for the other dealers, I am only concerned about myself and the product that I represent.

Mr. HOLTSINGER. Mr. Chairman, could he be allowed to read his statement in full and then be questioned after he reads his statement?

The CHAIRMAN. Well, we always reserve the right to interrupt any witness regardless of the gentleman appearing. But we will grant that courtesy to him. We will hold all questions until he is finished.

Mr. HOLTSINGER. Thank you, sir.

Mr. HOHLT. After they—meaning the company executives—had given us their interpretation, the company executives withdrew from the meeting, and we dealers formed our own committee to decide what to do.

This committee drew up the release opposing the bills, and also a 7-point program of action. And then after it had been approved by the dealers as a whole, we, the dealers, asked the company in the interest of speed to send out the report of the meeting to us, and to all of the Ford Motor Co. dealers.

You may wonder why we thought that this speed was so essential. The simple fact is that then we learned at that meeting that the O'Mahoney bill had been passed through the Senate without any of us being allowed a chance to testify on it, and that hearings on the Celler bill were due in a very few days. Furthermore, it seemed obvious to us that Admiral Bell and his assistants in the NADA were bent on getting this legislation enacted into law at this session of Congress before the real feelings of all the dealers could be made known to Congress.

That is the simple story of the Dearborn meeting, Mr. Chairman, and I think that you in your committee should be aware of it, because my testimony which I am about to give is my own, and not that of any puppet.

I want to state that I consulted my attorney about this bill on returning from Dearborn, and he concurred in my opinion about it.

I started in a small town of 2,000 people and in the Ford business with 7,000 borrowed dollars. Many times, if my checking account was in excess of \$100 I felt very good. Today I operate two dealerships, a Ford dealership which is known as B. E. Hohlt, Inc., and a Lincoln-Mercury agency which is known as Quad City Motors, Inc. The dealerships are owned by my wife and myself. I am general manager of both agencies, and I am very active as a dealer.

I operated under regulation W, OPA, and NRA, and I certainly beg of you gentlemen not to impose any legislation that will cause hardships on dealers as during those periods. Any legislation concerning the company and myself, I feel, would be a stumbling block in the path of free enterprise. I have had some difficulties with the company which I have always been able to work out to my satisfaction.

I had a bad manager in one of my dealerships, Quad City Motors, and decided to sell that agency. I did not find a buyer as quickly as I thought I should, and asked the company to find a buyer. They sent several buyers to me who, in plain words, wanted to steal the assets of this business. I closed this agency on October 11, 1954, and did not open it until I was able to secure a good manager, which was April 11, 1955.

During that time the factory had no representative of Lincoln-Mercury cars in my area, and at no time insisted that I take a loss or sell the assets of that business unless it was entirely satisfactory to me. The agency is operating now at a profit, and I am happy that I did not dispose of it.

I believe that the bills which we are discussing would certainly be a boon to dealers who wish to bootleg cars or who would be satisfied with a very mediocre job. An aggressive dealer certainly does not want to be hamstrung by any regulations that would affect him and his factory.

If such legislation is passed, the distribution of automobiles would have to be entirely changed, service facilities would have to be made available at points other than my places of business for the automobiles which I sell, and prices would certainly have to be increased for the factory to live with such a law.

I have never bought any units or any parts that I did not want. I personally sign all new-car orders, and if my judgment picks a unit or units that are not as quickly salable as other units, I certainly cannot condemn the factory.

I have been a member of NADA for a long time, and have been area chairman in my area for about 8 years. I feel that, as an organization, NADA should represent the dealers as long as their representation does not adversely affect the welfare of all dealers.

On many of their reports which they publicize in *Automotive News* as to earnings of dealers nationally, I feel that the percent of dealers who submit figures for these reports are in the minority. I have talked to many successful dealers of all makes and asked them if they have sent financial statements or financial reports to NADA, and they have all told me that they have not. The picture which they report is not a complete picture of all dealer operations.

This business has been good to me and my family, and I have built my original investment to a half-million-dollar corporation. When I decide that the automobile business, which I might state, I love, is no longer a moneymaking investment for me, I know that I would have no trouble getting out of it.

Gentlemen, may I again say, please consider all the facts before good dealers and good factories are harnessed by harmful legislation.

Thank you very much.

The CHAIRMAN. Now, you say that the bill will impose—you may sit down.

Mr. HOHLT. Thank you.

The CHAIRMAN. You say the bill will impose hardships on the dealers. I believe those were your words.

Mr. HOHLT. Yes, sir.

The CHAIRMAN. In what way would the bill impose hardships on dealers?

Mr. HOHLT. Well, being a dealer during all of the three Federal regulations, like NRA, OPA, and regulation W——

The CHAIRMAN. This has nothing to do with OPA.

Mr. HOHLT. I know it has not, but it is a Federal regulation.

The CHAIRMAN. I ask you, have you read the bill?

Mr. HOHLT. Yes, sir.

The CHAIRMAN. Show me in the bill where there is anything about Federal regulation in the bill. Take H. R. 11360.

Mr. HOHLT. All right.

In section E——

The CHAIRMAN. Section E?

Mr. HOHLT (continuing):

The term "good faith" shall mean the duty of each party to any franchise and all——

The CHAIRMAN. 11360; we are considering the House bill, 11360.

Mr. HOHLT. I have got a blank here.

Do you have one, George?

Well, it is the same wording, isn't it, there?

The CHAIRMAN. No.

Mr. MALETZ. No; the Senate bill——

Mr. HOHLT. The words that I want to cover are "coercion, intimidation, or threats of intimidation or coercion."

The CHAIRMAN. Section E at the bottom of page 2.

Mr. HOHLT. Thank you.

The CHAIRMAN. The bottom of page 2, subsection (e), like in Edwin.

Mr. HOHLT. Yes [Reading:]

The term "good faith" shall mean the duty of the automobile manufacturer, its employees or agents, to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer the freedom from coercion, intimidation, or threats or coercion or intimidation——

well, here is the way I feel about that.

Suppose in my area——

The CHAIRMAN. No. Let me interrogate you, now.

Would it be a hardship on the dealer if the manufacturer is compelled to be fair?

Mr. HOHLT. Yes, it would, because the manufacturer would have to change all of his contracts to cover that.

The CHAIRMAN. I am just limiting myself to the language of the bill. Would it be a hardship on anybody, including the dealer, to have the law say that the people the dealer deals with, namely, the manufacturer, must be fair? Just limit yourself to that.

Is it a hardship on the dealer to have that requirement?

Mr. HOHLT. Mr. Chairman, why do we have the bill? I mean, we have always had fair——

The CHAIRMAN. That is not the question. The question is, Is that a hardship on the dealer?

Mr. HOHLT. It will be, if the law is enacted.

The CHAIRMAN. Why?

Mr. HOHLT. And that is my personal opinion.

The CHAIRMAN. Why?

Mr. HOHLT. Because the contracts will be changed.

The CHAIRMAN. No; just limit yourself to fairness. If the manufacturer is fair to the dealer, is that a hardship on the dealer?

Mr. HOHLT. The manufacturer has been very fair to me. I am only concerned in myself.

The CHAIRMAN. We do not legislate just for you, we legislate for the whole United States.

Mr. HOHLT. That is true.

The CHAIRMAN. We have had testimony to the effect that the manufacturers have been unfair, they have not been fair.

Mr. HOHLT. That has been true.

The CHAIRMAN. All that this bill does is to see to it that the manufacturer is fair to the dealer.

Now, how can it be a hardship on the dealer, if legislation requires the manufacturer to be fair?

Mr. HOHLT. Mr. Chairman, I know that there has been unfairness in other makes and other factories, I know that they have had problems. Well, they are certainly not my problems. So, why should I, or why should a group of Ford dealers be harnessed——

The CHAIRMAN. In what way can a problem arise if the manufacturer is fair?

Mr. HOHLT. The manufacturer is fair; we don't need a law to make him fair; he is fair now. Where we had any reason—

The CHAIRMAN. Then that particular language has no effect on you. What is the hardship?

Mr. HOHLT. Has anyone been in here and said that the factory was unfair to any of the Ford dealers?

The CHAIRMAN. We don't know about Ford dealers—

Mr. HOHLT. I mean, has any Ford dealer testified in these hearings that the factory has been unfair to him?

The CHAIRMAN. Ford is only one manufacturer. We have had testimony that manufacturers have been unfair, and what we are seeking to do is to insist upon fairness in their dealings.

Now, do you think that it is a hardship on the dealer to require equitable conduct on the part of the manufacturer?

(Mr. Hohlt consults with Mr. Holtsinger.)

The CHAIRMAN. Don't prompt the witness, please.

Mr. HOHLT. That—I feel that those are problems of each make dealer and each manufacturer, and they have to work out their own problems.

The CHAIRMAN. The record shall state that your answers are evasive and they are not responsive to the questions propounded to you.

Mr. HOHLT. I can only answer, Mr. Chairman, as I see them.

The CHAIRMAN. All right. You answer them that way. You do not make any impression upon the members of the committee.

Mr. HOHLT. I can only tell the truth. I don't know anything about any other dealers. I mean, I cannot let you sit up there and answer the question for me and make up my mind.

The CHAIRMAN. I do not care whether you know or do not know and other dealers. I am asking you just a simple, commonsense question.

Mr. HOHLT. And I answered it in a simple, commonsense way.

The CHAIRMAN. You did not at all.

Mr. HOHLT. We do not need a law for fairness because we have had no reason.

The CHAIRMAN. You answer it in a very, very evasive manner.

Now, is it a hardship on a dealer to say that the dealer shall be free from coercion, intimidation, and threats of intimidation from the manufacturer? Is that a hardship on the dealer?

Mr. HOHLT. Yes; it is. For example, may I cite an instance, sir?

The CHAIRMAN. May you cite a what?

Mr. HOHLT. May I just make an example? Suppose I sell 400 units a year. I am not too large a dealer. That is about the volume of units that I sell. Suppose this law goes through and I decide that I am going to sell 200 units a year.

You know and I know that the manufacturers have a lot more attorneys and they are a lot more attorney-minded than any of the dealers.

I am in the automobile business to make a living, and I have a lot more activities in public relations other than to be sitting in a lawyer's office all the time. But I know that the factories will have a contract so that if their representative would come over to me and say, "Now, here's your market potential—or your competition is out-selling you and you should sell 400 cars and you are only orderi—"

200 cars," then, I mean, I would have grounds to sue them under this law.

So then the factory would have the privilege——

The CHAIRMAN. In other words, you want the manufacturer to have unlimited authority to coerce and to intimidate the dealer? That is what you want?

Mr. HOHLT. Mr. Chairman, I have been a dealer 21 years. I have never been coerced or intimidated.

The CHAIRMAN. That may be——

Mr. HOHLT. Now, I mean, you don't have all the facts when you say that.

The CHAIRMAN. We have many facts that you haven't got.

Mr. HOHLT. Let me say this——

The CHAIRMAN. In your case, you may have been free from intimidation or coercion, but there are many others who are not similarly situated, and they are asking for relief. There are many hundreds, maybe thousands, who have been coerced, who have been intimidated, who have had their dealers' contracts cancelled, not on good grounds, but on coffee grounds, if I may put it that way. And it is a shocking situation that has been revealed to us. We are seeking to legislate in the interests of the greatest good for the greatest number. It may be that your case is an exemplary case and it may be that the manufacturer in your case has not been guilty of intimidation or coercion, but that is not the situation in many parts of the country, and we are trying to guard against that. Therefore, we simply say that the manufacturer shall be equitable; he shall be fair and shall not be guilty of arbitrary conduct.

I should think that that is all in your favor. Yet you come here and you say language like that is not in your favor. Either I have lost my commonsense or you have, and I am inclined to believe that I have not lost mine.

Mr. HOHLT. Mr. Chairman, every automobile dealer is an independent businessman, regardless of what make or model he sells. He either has his own money in that business or he has money that he has signed notes for and is liable for in that business.

Now, there is no factory in this country or no manufacturer that can make any dealer do anything that he doesn't want to do.

The CHAIRMAN. Oh, let us pause there. The manufacturer could make him give up his franchise. There are franchises that provide that they are cancelable at will. Therefore in a most arbitrary, inequitable manner, the dealer may, despite his investment, find himself out in the cold and deprived of his right to sell those cars. His franchise is taken from him.

Now, that is what we call inequitable treatment. In other words, no cause is assigned; in a purely arbitrary way the franchise is canceled. Wouldn't that be unfair conduct?

Mr. HOHLT. Mr. Chairman, I feel that a factory and a dealer relation——

The CHAIRMAN. No; no. You are not answering my question. Is that or is it not unfair conduct on the part of the manufacturer?

Mr. HOHLT. I don't know about any cases. I mean, you told me that you have a lot of evidence there that I don't know about.

The CHAIRMAN. But we want to know about it. I am asking you if——

Mr. HOHLT. How do I know about it? That question is ridiculous. I don't have the facts that you have there.

The CHAIRMAN. I am giving you a case, a clear case.

Mr. HOHLT. Cite the particular case and give me the facts of the case.

The CHAIRMAN. We have any number of them.

Mr. HOHLT. I mean, you are just talking generalities. You are not citing any specific case.

Mr. MALETZ. Mr. Hohlt—

The CHAIRMAN. Never mind. Never mind.

Let us have the next witness. Bring your next witness. The witness is not responsive.

Mr. HOLTSINGER. Mr. Chairman, I don't think that we can get very far here—

The CHAIRMAN. Never mind that. I am going to conduct this hearing, and you are not going to conduct it for me.

We have our distinguished colleague, Congressman Cramer, here. He wants to say a word.

STATEMENT OF HON. WILLIAM C. CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. CRAMER. Mr. Chairman, I have Mr. F. M. Scarritt, if he will come forward for just a moment, please.

I do not mean to interrupt the presentation. He is on the same side, I believe. But I did want to have the privilege of presenting him to our distinguished chairman of this committee, to submit a statement.

He is an outstanding citizen of my community, my hometown, as a matter of fact, having been in business there for some 35 years, and he has had a Lincoln-Mercury dealership for some 10 years, and I know he is an outstanding citizen and I am sure you will give every consideration to his statement. If he wishes to file one, I know the chairman will be glad to receive it.

The CHAIRMAN. I will be glad to receive it.

Mr. SCARRITT. I waive my chance of testifying so that these other people can testify.

Thank you very much.

Mr. CRAMER. Will you give your statement to the reporter?

(The prepared statement of Mr. Scarritt, in full, is as follows:)

STATEMENT OF F. M. SCARRITT

My name is F. M. Scarritt, of St. Petersburg, Fla. I have been in the automobile business in Florida for over 35 years. I am now, and for the past 10 years have been, owner of Scarritt Motors Inc., Lincoln, Mercury, and Continental dealerships in the above city. I come here today because I fear that there may be legislation passed that will be detrimental to my best interests and the interests of all automobile dealers, manufacturers, and the public at large. I have reference to the O'Mahoney bill, S. 3879. I feel that if this bill is passed by the House and subsequently becomes law, the dealers of new cars will find

themselves operating under Government controls of many types and it would be almost impossible to function in the real competitive American way as we always have.

I remember the NRA, when the Government told us how much we could give for some old car in trade on a new or another used car. This was eventually declared unconstitutional after a few years, but the backbone of the automobile business was almost broken. This unconstitutional legislation was finally done away with.

We then went through the war with OPA and all franchised automobile dealers accepted their share of the responsibility and agreed that some kind of control was necessary for the duration. But did we get rid of Government controls after the war? We did not. We were saddled with OPS and it took more paperwork to complete 1 little \$200 transaction on a used car than it would take to transfer ownership of the Empire State Building. Then we had regulation W. This law said we could not sell a new or used car unless we first got one-third downpayment, and if the purchaser did not have enough for the downpayment he just didn't buy a car. If the purchaser did have the required one-third down, he had to pay the balance in a maximum time of approximately 18 months and no consideration was given to the fellow that wanted to buy a car in the middle-price class because his credit was good or his crop was coming in later in the year and he could pay up at that time.

I cite these few past Government controls because they have so indelibly fixed themselves into the minds of so many of us automobile men that we shudder to think of what might happen if we get permanently attached to any kind of Government controls again. There has been no doubt about certain inequities in the automobile business in the past few years. Bootlegging of new cars by franchised and nonfranchised dealers is one, but under the O'Mahoney bill I can say only that it gives the unethical dealer the right to bootleg all the new cars he pleases and if the manufacturer tries to stop him, he invokes petition E of section I of the O'Mahoney bill, which says that the manufacturer must act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion and intimidation.

Now what do you think would happen if the manufacturer shut off his supply of new cars even if he was selling them to used-car dealers from Maine to Mexico? I have a very substantial sum of money invested in my business and I certainly don't want my Government passing a law that would jeopardize this business, and I believe this bill does just that. The relations of my manufacturer and myself have been very satisfactory for a very long time. Although we may have differed on some things, we have always been able to settle our differences agreeably by sitting down and discussing them together. They have recently inaugurated new policies that will save the dealers many dollars and I think they will have, before very long, other changes in our contracts that will be equal to or better than most of the contracts in the automobile industry today.

To sum up briefly my thoughts on this whole matter:

1. I am against this legislation because I feel it would hurt rather than help the franchised automobile dealer, the manufacturer, and the public at large.
2. The automobile business is a live, vivacious business. Let's not legislate it into the doldrums of a cut and dried Government controlled business of non-doers by passing the O'Mahoney bill.
3. Factories are taking a firm stand on bootlegging and other unethical practices. Let's give them, with our help, a chance to get it straightened out without Government interference.

Mr. CRAMER. Thank you very much, Mr. Scarritt.

Mr. SCARRITT. Thank you.

The CHAIRMAN. Bring your next witness.

Mr. HOLTSINGER. Mr. Chairman, I would like to introduce Mr. Roy O'Brien, of Detroit, Mich.

The CHAIRMAN. Counsel is going to put in the record some of the inequitable, unfair and arbitrary conduct of some of the manufacturers, right at this point.

Mr. MALETZ. Mr. Chairman, I offer in evidence at this point a report of the Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce entitled "The Automobile Marketing Practices Study," dated January 19, 1956.

Mr. Chairman, I also offer in evidence a staff report of the Senate Subcommittee on Antitrust and Monopoly, entitled "Bigness and Concentration of Economic Power, a Case Study of General Motors Corp.," dated April 30, 1956, chapter 9, entitled "General Motors and Its Dealers."

That chapter is found beginning at page 76 and extending through page 97.

The CHAIRMAN. They will be accepted.

We will also incorporate at this point a Committee Print entitled "The Automobile Marketing Practices Study," interim report dated July 28, 1955, of the Subcommittee on Automobile Marketing Practices of the Committee on Interstate and Foreign Commerce.

(The documents referred to are as follows:)

9. GENERAL MOTORS AND ITS DEALERS

That aspect of General Motors' operation which produced the greatest number of complaints involved factory-dealer relations. When it became known the Subcommittee was making a study of General Motors, wires, letters, phone calls and personal complaints from dealers and their organizations poured in to the Subcommittee from all over the country, urging legislative action.

Among the major problems of our economy are the relationships between the large buyer and many sellers and the large seller and many buyers. The latter characterizes the relationship between the manufacturer of automobiles and the automobile dealer. General Motors as the largest manufacturer in the United States deals with about 18,000 individual dealers handling its passenger cars and trucks. A relationship in which all the economic power rests with one party lends itself to inequities.

Another subcommittee of the Senate has been set up for the specific purpose of studying factory-dealer relations in the automobile industry. Therefore, it was the original intention of this Subcommittee to concentrate upon the problems arising from or related to the size of General Motors and to give limited attention to dealer problems, leaving such matters to the special subcommittee of the Interstate and Foreign Commerce Committee. However, it quickly became apparent that the complaints of the dealers were directly related to the question of size and power and the alleged abuse of such power.

While it appeared the dealer problems were common to all the automobile manufacturers, there was evidence that the largest producers were the principal offenders. Furthermore, the current agitation of General Motors dealers was intensified by the bitter contest between Ford and General Motors for leadership. This struggle

between the two titans in the industry culminated in the vigorously aggressive sales campaigns of 1953, 1954, and 1955. The sales results achieved at the height of this struggle are truly amazing. In 1954 General Motors new passenger car registrations totaled 2,806,595. But in 1955 these results are dwarfed by an increase in sales of more than 40 percent.

The testimony adduced concerning the techniques employed to achieve market penetration and the resulting consequences to dealers, indicates the perils to dealers incident to this type of competition. This contest for market preeminence between General Motors and Ford dramatized that the "independence" of the dealer is more theoretical than real. Being completely dependent upon the factory, his position is more analogous to that of an employee.

Aggressive merchandising is a healthy sign of competition and can produce great benefits to the consumer, but when conducted within the framework of a system which gives the manufacturer a whiphand, the dealer is made to bear a large share of the burden of the competitive battle. Dealers' experience from 1950 to 1954 was a continuous decline in return on sales according to data submitted by the National Automobile Dealers Association. In 1955 there was apparently some recovery in dealers' return. General Motors' reply to the allegation that dealers have suffered was that dealer profits measured as a return on net worth indicate dealers have done well. But the Corporation's figures substantiated the fact that its dealers' return on net worth continuously declined from 1950 through 1954.

It would appear that while General Motors was aggressively seeking greater volume and surpassing its historical rate of return, this aggressiveness was displayed in the form of pressure upon dealers to offer price incentives and not in reductions in factory base prices. Dealers were being required to make the price concessions. The Subcommittee's attention was sharply focused upon the conditions which made possible such a situation. The heart of the matter appeared to be in the nature of the dealer franchise and the inequitable manner in which it permitted the manufacturer to control the dealer's economic life.

The historical relationship between the automobile manufacturer and his dealers has been fraught with friction. Competition in the industry has to a great extent expressed itself in competition among dealers on price and among manufacturers in product and dealer organization. The effect has been to reduce dealer earnings in periods of factory pressure to sell cars. Such has been the case since the changeover to buyer's market beginning sometime in 1953. Since standards of profits and of living are to some extent based upon experience, dealers with memories of lush postwar years are restive today.

In the marketing of automobiles a distinctive distributive system has been developed. The complicated nature of the product, its durability, high cost, and need for maintenance and repair meant that the automobile had to be sold as a specialty item. The manufacturer could not completely disassociate himself from the product after sale. Service guaranties and the need for replacement parts and service required a close association between dealer and manufacturer.

The method of distribution developed in the automobile industry was also greatly influenced by capital requirements. Distribution

requires a costly retail structure and manufacturers were notoriously short of capital in the early days of the industry. The distribution system which evolved provided both capital to the manufacturer and service to the purchaser. Independent wholesalers were found who assumed the responsibility for marketing automobiles through their own dealerships or by appointing dealers in the areas of distribution assigned to them. Simultaneously the practice was adopted of selling cars for cash only and in many cases requiring deposits against future delivery. The wholesale distributor became an important factor in the distribution of automobiles. He was, however, an intermediary between the manufacturer and dealer and unsatisfactory in some ways. To the manufacturer, he was an obstacle to control over retailing and represented additional cost. To the dealer, he represented competition since invariably he sold cars at retail as well as wholesale.

Automobiles were not marketed solely through wholesale distributors. The Ford Motor Co. early in its history established factory branches and dealt directly with its retailers. Packard, in addition to its sales to independent dealers, was at one time a significant retailer of its own product. Many firms established branches and retail outlets or used various systems of distribution simultaneously.

With the development of the industry and its product, and with the decline in the number of producers, there came an increased emphasis upon marketing. The manufacturer felt the need to control the merchandising of his product, establish standards of dealership operations, advertise and carry on market research. For these operations to be successful, direct association with the dealer was necessary and the wholesale distributor's function became a positive barrier to successful control over distribution.

Displacement of the wholesaler began quite early, although for some firms he remained the major distribution conduit until the recent war. Today, however, he exists as an important factor only in the case of low-volume car lines and in foreign operations. The manufacturer today generally deals directly with the retail dealer.

Simultaneously with this development, other elements of the industry's structure changed. The number of producers declined, thus reducing the alternatives open to dealers. While the number of car lines remains high, the dealer is limited in the number of producers whom he can choose to represent. Secondly, to each dealer each of the producers is an industrial giant. The wholesale distributor perhaps had economic power vis-a-vis the producer, but the individual dealer has little. Further, the use of the used car injected a new note into the characteristic of the market. The manufacturer continued to sell his product for cash, but the dealer today, 8 times out of 10, sells a new car for cash plus a trade-in, and in every second sale of a used car accepts another trade-in as part payment.

Thus, while the manufacturer and dealer have much in common in their desire to sell the major product of the industry, the structure of the industry contains areas of conflict. The manufacturer is interested in his total sales and the dealer in his, but the various elements comprising their sales are not the same. Because of trade-ins, the manufacturer's total sales frequently can be increased at the expense of the dealer's. Higher trade-ins increase new car sales but may only increase used-car inventory for the dealer. Both manufac-

turer and dealer sell parts and accessories. The dealer, however, has alternative sources for such items.

To the manufacturer the dealership is a sales outlet to be judged solely on its efficiency in furthering the manufacturer's interests. He demands the right to increase, decrease, or substitute sales outlets as he deems necessary. The dealer regards himself an independent businessman and his franchise as a property right, the loss of which will cause him damage. This conflict in interest is between parties of totally unequal economic power. As a result, the manufacturer has been able to determine arbitrarily the rules by which the two parties conduct their business affairs. The rules are incorporated in the sales agreement which the manufacturer has prepared for the dealer's signature.

There is continual conflict between the manufacturer and the dealer over the degree of control exercised by the former. General Motors is insistent that it needs this control since its products reach the consuming public through the dealerships. The dealer, on the other hand, resents the control and supervision exercised over him.

This struggle between the manufacturer and the dealer has precipitated extensive litigation. The only successful suits by disaffected dealers have been those based upon acts of the manufacturer made wrongful by State or Federal law. Charges of antitrust law violations offer the dealer the higher hopes of success, but the need for proving a public wrong and establishing other difficult requirements frequently defeats such actions brought under these laws. Arbitrariness of factory action, unfulfilled promises of factory agents, summary cancellation and dictatorial factory demands, have all been held insufficient to state a cause of action based on the dealer franchise. Suits grounded in equity may offer more prospect of success.

The franchise system for distribution of automobiles has been described as a system devised by the automobile manufacturers to secure maximum rights with a minimum of liability (VII, 3193). It may be defined as an agreement by which the manufacturer appoints the dealer to handle his line, and the dealer, in return for this privilege, agrees to conduct his business according to the standards and desires of the manufacturer. It is the method by which the manufacturer assures himself of control over the distribution of his product in what amounts to quasi-integration to the retail level of distribution. The manufacturer can maintain this control because of his superior economic position which he retains by threat of franchise termination.

In various suits in the past, General Motors has characterized its dealer franchise as follows:

1. That it does not constitute a legal contract;
2. That it lacks mutuality, and represents no legally enforceable obligation on the part of the seller to sell or on the part of the dealer to buy;
3. That it provides that the dealer shall perform to the satisfaction of the seller, and that the question of satisfaction is for the seller alone to determine;
4. That no damages are recoverable by the dealer since loss of profits was not contemplated by the parties;
5. That it is unenforceable and void because of indefiniteness, uncertainty, and lack of consideration; and

6. That, if valid, the agreement gives the factory the right to terminate at will.

With few exceptions, the courts have sustained the manufacturer's interpretation of the agreement, and the courts have held that dealers fail to state a cause of action when suit is brought on the agreement alone.

Many provisions in the agreement afford opportunities to the manufacturers to take unfair advantage of the dealers. In commenting upon the nature of the selling agreement, the court in *S. B. McMaster v. Ford Motor Co.* (3 F. 2d 469, p. 473) stated as follows:

* * * they are entirely within their rights in so framing their contract to carry out their intention. The intention of the parties in the absence of any grounds of public policy must prevail, and their intention must be gathered from the terms of the contract itself.

A further comment in the same case clearly states the manufacturer's contention that he must be able to control his dealers, and the court's view that the dealer willingly submits in order to secure the franchise:

As I view this contract, the case is simply this: The manufacturer desires to sell his products in such manner only that his interest may be promoted. He therefore demands as part of the price in the making of the contract that the person to whom he sells his goods shall submit to certain restrictions. The person desiring to buy the manufacturer's goods is anxious to purchase them, and in order to purchase them is willing to submit to the conditions and restrictions named * * *

The position of the courts on the legality of the selling agreement does not indicate that they approve of the relationship. In *Ford Motor Co. v. Kirkmyer Motor Co.* (65 F. 2d 1001, p. 1006) the court condemned the one-sided character of the agreement in the following terms:

It appears that the plaintiff has been disappointed in its expectations and has been dealt with none too generously by the defendant; but, while we sympathize with its plight, we cannot say from the evidence before us that there has been a breach of binding contract which would enable it to recover damages. While there is a natural impulse to be impatient with a form of contract which places the comparatively helpless dealer at the mercy of the manufacturer, we cannot make contracts for parties or protect them from the provisions of contracts which they have made for themselves. Dealers doubtless accept these one-sided contracts because they think the right to deal in the product of the manufacturer, even on his terms, is valuable to them; but, after they have made such contracts, relying upon the good faith of the manufacturer for the protection which the contracts do not give, they cannot, when they get into trouble, expect the courts to place in the contracts the protections which they themselves have failed to insert.

In *Buggs v. Ford Motor Co.* (113 F. 2d. 618, p. 619) the court stated:

An examination of its terms, which are many, indicates that it was dictated by the manufacturer at Detroit, and drawn by its counsel with the avowed purpose of protecting the manufacturer to the utmost and granting, if any, few rights to, and the smallest possible protection of, the agent.

It is one which affords some support for the wisdom and the necessity of legislation which protects the weak against a strong party in situations like the instant one.

As the courts have stated, dealers have failed or neglected to insist on provisions for their own protection and have thereby placed themselves at the mercy of the manufacturer. Form contracts alone frequently reflect complete control of negotiations by the manufacturer and lack of bargaining power on the part of the dealer.

In the course of the hearings, Charles M. Hewitt, Jr., Assistant Professor at Indiana University, traced the development of the fran-

chise agreements and submitted supporting data including the views of courts and many legal writers. Professor Hewitt did not testify about any particular acts of abuse, but confined his remarks generally to the franchise system used by manufacturers.

The selling agreement, according to Professor Hewitt (VII, 3225) as now drawn and interpreted by the courts, represents a legal device deviating in two respects from the basic principles that characterize a free society in that:

(1) It is a device which gives a small group in society (the manufacturers) control over a larger group in society (the dealers) without the former being in any way legally accountable.

(2) It represents an example of a type of a private government by men instead of law (VII, 3225).

The control exists because the dealer franchise does not represent the free will of the parties as do ordinary contracts. Professor Hewitt asserted that at any given time a majority of the dealers are already economically committed to one manufacturer, and thus have no practical choice but to accept any terms the manufacturer imposes. By way of illustration, he pointed to General Motors' change from a continuing agreement to a 1-year agreement. The dealers objected to the change but had no choice in the matter because their investment committed them to one manufacturer (VII, 3203).

Most critics of the factory-dealer franchise system agree that the faults of this system are directly attributable to the superior market position of the manufacturer. The economic strength of the manufacturer manifests itself in two principal ways:

(1) Control and supervision over the dealer's business.

(2) Power to terminate or to refuse to renew the dealer's franchise.

Threat of termination which the manufacturer holds over the dealer, once the latter commits himself to the requirements for entry into the industry, permits the manufacturer to control the dealer and his operations. The dealer accepts this relationship in the expectation that it will be profitable. He later can reconsider his decision only with the knowledge that his business is specialized in nature and his capital not readily transferable to alternative uses. The threat of termination, therefore, makes him a pliable tool.

Criteria for the relationship between General Motors and its dealers are determined by the former. They are summarized in the provision of the franchise which states that the dealer "shall develop the territory to the satisfaction of the seller" (VIII, app. B, XXIV). What constitutes satisfactory performance is the issue on which General Motors and its dealers have their most serious disagreements.

General Motors dealers have expressed strong resentment against the arbitrary manner in which General Motors exercises its rights under this provision. Rear Adm. Frederick J. Bell, executive vice president, National Automobile Dealers Association, testified that from his conversations and communications with hundreds of dealers throughout the country, he had never received a "satisfactory definition of the term."

As a matter of practice, "satisfactory" requires the dealers' fulfillment of factory standards regarding sales of cars. "Penetration of market" is the term used in judging dealers' performance. "National sales" averages in the various price classes are used as criteria. Pres-

sure is exerted upon dealers to measure up to these factory standards; the dealerships of those who fail are terminated; those whose franchises are not terminated are subject to continued pressure. Such pressure takes the form of visits, telephone calls, and letters from the zone office. Dealers have indicated that they are thus induced to take automobiles which have been "tentatively allocated" to them. The following correspondence with one dealer indicates how allotments to the zones are made, and how, in turn, the zone managers set certain objectives for the dealers:

BUICK MOTOR DIVISION,
Cafritz Building, Washington 6, D. C., February 21, 1955.

* * * Against your February new-car delivery objective of.....	177
You have delivered in 20 days.....	95
Balance to accomplish through Feb. 28.....	82

We're counting on *you*.

Looks like will have to put on a big push. W.

Yours very truly,

W. E. YOUNG,
Zone Manager.

BUICK MOTOR DIVISION,
Cafritz Building, Washington 6, D. C., March 8, 1955.

* * * Our production schedules nationally have just been increased again, but we cannot expect our full share unless we step up our delivery rate and bring our days' supply into line with national.

Your March sales objective is 223.

Will you deliver 74 by closing time this Thursday?

Yours very truly,

W. E. YOUNG,
Zone Manager.

February objective was.....	177
February actual deliveries.....	138
	39?
	W.

BUICK MOTOR DIVISION,
Cafritz Building, Washington 6, D. C., April 7, 1955.

* * * The objective for our zone for April is 2,900 new-car deliveries, requiring 967 per period which is a few more than our record of 946 just established.

Thirty-five of our zone's dealers equaled or exceeded their March objective and 11 more missed it by just 1 delivery.

If every dealer will sell the models on-hand and concentrate his sales efforts on the models available, the Washington zone will make its April objective. It can be done.

Yours very truly,

W. E. YOUNG,
Zone Manager.

Your March objective.....	223
Your March deliveries.....	223
Your April objective.....	237
Deliveries required through Apr. 10.....	79

What a grand finish. We're trying to help you keep it up. W.

These letters show that the allotment to this dealer continually advanced from February through March. If a dealer does not sell the percentage or quota assigned, he may be accused of not "penetrating the market" to the satisfaction of the seller. James T. Hamrick, Oldsmobile dealer, Mobile, Ala., testified that he had been getting about 350 cars per year, when the zone manager practically doubled his allot-

ment, although he explained that his facilities were insufficient for the increased amount, and that an allotment of that size would require an additional investment in facilities which he was not willing to make (VII, 3355).

General Motors also expects dealers to sell automobiles with a given percentage of power equipment as illustrated by a typical bulletin from the Buick Division:

BUICK MOTOR DIVISION,
Cafritz Building, Washington 6, D. C., June 22, 1955.

Bulletin No. CD-94.

To: All Buick dealers, Washington zone.

I am listing below the power equipment percentages which will be in effect for the month of July:

	Percent
Dynaflow "A": 40 series-----	90.0
Power steering "C":-----	
40 series-----	20.0
60 series-----	50.0
Power brakes "L":-----	
40 series-----	10.0
60 series-----	40.0
50 series-----	55.0
70 series-----	95.0
Power seats "S":-----	
41-----	2.0
43-63-----	10.0
46R-66R-----	2.0
52-----	10.0
56R-----	8.0
72-----	20.0
76R-----	55.0
Power windows "U":-----	
41-----	1.0
43-63-----	10.0
46R-66R-----	2.0
56R-----	4.0
52-72-----	6.0

I urgently request that you personally see that this information is passed on to the sales manager and salesmen. In this way they will be able to direct their selling efforts in line with the availability of material throughout the months.

R. L. INGERSOLL.

Many dealers have complained that they are required to submit orders in conformity with the percentages indicated by such bulletins. Dealers James T. Hamrick and Miller Kaminsky, Cadillac-Pontiac, Savannah, Ga., testified that they had to adjust their orders to comply with such requirement by ordering cars with more equipment (VII, 3353). General Motors rebutted Mr. Kaminsky's testimony by saying (VII, 3760):

* * * Before the committee, Mr. Kaminsky testified that orders for new cars were returned to his dealership because he had not ordered enough accessories. Pontiac Motor Division follows the policy of accepting orders for new cars as they are submitted by the dealer. All dealers are free to order accessories installed on new cars entirely in line with their own judgment.

Although this may well be the policy of the Pontiac Division, it does not prevent an overzealous zone manager from exerting pressure on a dealer in order to improve the performance rating of his zone.

The terms "percentage of price class," "national average" and "failure to develop market to seller's satisfaction" go hand in hand. These indefinite terms are used by the corporation in discussing "volume

selling" with a dealer. The dealer is reminded that he is not getting his percent of price class, that he is below national average, and that he is not penetrating the market. Dealers may be above national average and still fail to get their percentage of price class. A price class is a grouping of competitive products. For example, Plymouth, Ford, and Chevrolet represents a price class. Price class and national average are the yardstick by which the manufacturer measures the dealer's volume selling; pressure is brought to bear on the dealer to take and sell more automobiles in order to maintain percentage of price class or national average. Testimony indicates that a dealer may exceed another dealer in his price class for a given period or for many periods, but if he fails for the current period, he is subjected to pressure—the price class must be maintained at all times (VII, 3478). It would appear that the terms "percent of price class" and "national average" are used by General Motors to gage the performance of their dealers and to spur them on to greater volume selling regardless of the market conditions in their areas of responsibility.

Dealers contend General Motors pressure them to sell more cars by claiming their sales are below national average. An average implies a range; it is statistical nonsense to expect all dealers to be above national average. S. W. Fraser, general manager, Billingsley Motors, Portland, Oreg., stated that total Pontiac sales in his area were insufficient to satisfy General Motors' demands but that the corporation offered to renew his franchise if he would "hit national average." His testimony indicated that he did achieve the proportionate share of Pontiac sales assigned to him in his zone, 35.5 percent, but this did not give him national average (VII, 3275).

Some dealers complained that General Motors attempted to control their profits. Don B. Robbins, Buick dealer, Fort Smith, Ark., charged that the general sales manager, Buick Division, suggested that he lower his per unit profit to sell more cars (VII, 3397). The same suggestion was made to Mr. Fraser in a "before breakfast" telephone call from his general sales manager (VII, 3298).

The battle for sales supremacy between General Motors and Ford reflects itself at the dealer level. Ed Hammer, Chevrolet-Oldsmobile dealer, Sheridan, Wyo., testified that he was told to outsell the Ford dealer in his city if he wanted to keep his franchise, and the Ford dealer was told to outsell him; there could be no tie (VII, 3480).

Dealers insist they are forced to take more automobiles than their market will readily absorb. Because of factory pressure for volume sales, dealers state that they are obliged to make excessive trade-in allowances, and to cut suggested list prices.

According to witnesses, one of the most frequent types of pressure exerted by General Motors is to refuse to "preference" cars unless the dealer orders additional cars which he does not need or want. A "preference" is shipment to a dealer of a specific type car against his standing order with the factory. In support of this charge, dealer Don B. Robbins submitted to the Subcommittee a telegram which he

received after requesting preference on some low-priced cars. The telegram is as follows (VII, 3389) :

JULY 22, 1953.

Unable to preference tentative allotment for July due to lack of order coverage, particularly 56 R's, 72 R's, and 76 R's.

BLAKE,
Buick, Oklahoma City.

"Blake" is the car distributor for the Buick division, and the cars referred to in the telegram are those of a higher price class than Mr. Robbins needed for his customers. J. B. Silaz, Jr., Oldsmobile dealer, Conway, Ark., had a similar experience. His order No. 8687 was refused preference for several weeks until he sent in additional orders at the factory's request. Thereafter he received the following telegram :

June 1955: Orders received this morning, order 8678 will be placed on the preference this week.

GEORGE SMALL,
Oldsmobile Division.

Another type of pressure is the threat that new models will not be delivered unless the dealer "cleans house" at the end of the model year, as illustrated by a letter received by Mr. Silaz :

OCTOBER 19, 1955.

Get in 3-months' supply of 1956 orders today. You have received Mr. Jones' letter * * * *no 56's until clean house on 55's.* [Italics supplied.]

Another way in which General Motors forces the dealer into volume selling is by using the so-called modification letter. This is a typical letter :

SEPTEMBER 19, 1955.

This has reference to a conference held with you on March 17, 1955, at which time certain deficiencies in meeting the operating requirements of your selling agreement were called to your attention. As of this date your operation is deficient in the following respects :

1. Dealer shall properly develop to seller's satisfaction the sale of Chevrolet motor vehicles and chassis in the area described in paragraph first.

The new Chevrolet selling agreement is being executed with you at this time by Chevrolet motor division in consideration of your representation that you will correct the above deficiencies in your operation promptly, and in any event, no later than June 1, 1956. Should you fail to do so, it is our present intention not to offer you a Chevrolet selling agreement for the term commencing November 1, 1956.

So that there may be no misunderstanding as to your obligations and of the conditions under which the new Chevrolet selling agreement is being executed with you, will you please sign and return to us the attached carbon copy of this letter.

Very truly yours,

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORP.,
W. E. FISH,

General Sales Manager.

By (signed) DONALD G. HART,
Zone Manager.

The foregoing is hereby accepted and agreed to this ____ day of _____, 195__.

Dealers J. Ed Travis, Travis Service Co., St. Charles, Mo., and Ed Hammer received such letters which they characterized as evidence of pressure.

The net effect of all these pressures upon dealers to sell cars at any price is to encourage bootlegging, it has been charged. Bootlegging is the sale of new cars by franchised to nonfranchised, or used car, dealers at a small markup over cost, usually about \$50. Used-car dealers some distance from Detroit can frequently undersell franchised dealers in such areas since they do not have to pay the all-rail freight rate to point of destination, but merely actual cost—significantly below the charge to the franchised dealer. The used-car dealer offering less service to the customer has a much lower overhead than the franchised dealer.

Sumpter T. Priddy, Jr., general manager, Wilcox Motor Co., Waverly, Va., testified that the Chevrolet representative told him:

"It might not be a bad idea if some of these cars find their way to the used-car lot. After all, you are expected to take these cars under the conditions in the contract that were set up, and the cars were sent to you." (VII, 3383.)

M. H. Yager, Pontiac dealer, Albany, N. Y. (VII, 3459), testified that he, on his own initiative, secured the serial numbers of new cars on used-car lots that had evidently been bootlegged and forwarded the information to General Motors, but received no reply and is unaware of any action by the corporation.

A General Motors executive testified that they are opposed to bootlegging but there is nothing that they can legally do about it (VII, 3684). Mr. Curtice, president of General Motors, testified that the company requested approval of the Attorney General for a provision in their selling agreement that would have enabled them to stop bootlegging. The Department of Justice refused to give the necessary clearance under its "railroad release" procedure. However, it appears the corporation could control bootlegging if it really desired to do so by declining to furnish cars to those dealers who were known to be bootlegging.

Mr. Curtice testified that a plan was recently introduced which provided that if dealers are unable to sell cars at a profit in normal retail channels, they may offer to resell them to General Motors. To date, the corporation has repurchased only 24 station wagons out of the millions of cars sold to dealers. It is highly unlikely that dealers will run the risk of incurring the wrath of the corporation by offering to resell cars at a time when the corporation is pressing for volume selling.

The manufacturer, using the threat of termination, has imposed controls upon the conduct of the individual dealership. These controls, explicitly detailed in the selling agreement, affect the capital the dealer shall supply, his building, his sales staff, and almost every phase of his operations. Violation of any of these provisions is cause for termination of the dealer franchise. Many of these provisions are discussed in the Subcommittee's hearings. They give the manufacturer a measure of control over the resale of his product which is unknown in other industries.

The requirements respecting dealer's capital investment are set forth in the franchise as follows:

Capital Requirements (sec. 14) : Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set standards for dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

The testimony of James T. Hamrick indicated that he had \$200,000 working capital, well above his requirement of \$75,000, but needed permission of the corporation to withdraw \$21,000 (VII, 3363). Dealer Ed Hammer testified that he had been attempting for several years to have his son accepted as a partner and an owner of capital stock in his dealership, and that General Motors had refused such permission although he was apparently qualified (VII, 3480). Mr. Curtice testified that the corporation had improved the selling agreement to "enable a dealer to arrange for a son to succeed him in event of death or incapacity" (VII, 3501).

Other dealers charged that upon various occasions they were requested by the factory to add new buildings, remodel, or completely renovate their premises. The threat of termination frequently left the dealer little option in the matter.

The agreement requires the dealer to maintain a place of business satisfactory to the manufacturer, including salesroom, service facilities, sales staff, and mechanical staff, and gives the manufacturer the right to inspect those facilities. These provisions are:

Dealer's Place of Business Satisfactory to Seller (sec. 12) : Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station, or place of business including any used car lot or location without the prior written consent of Seller.

Sales Staff (sec. 17) : Dealer shall maintain a staff of salesmen and a selling and customer-relations organization adequate to take care of the sales potential of the area described in Paragraph First.

Inspection of Facilities (sec. 21J) : Dealer will permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

General Motors takes the position that any suggestions it makes concerning its dealers' business activities, especially with respect to the dealer's place of business and number of salesmen, are put forward in the interest of producing maximum sales activity and efficient operation. The record shows that General Motors required several dealers to expand their service facilities and even to construct new buildings, and that recommendations were made to dealers Elden E. Conrad, Conrad Motors, Springfield, Ohio, S. W. Fraser and Miller Kaminsky that they hire additional salesmen and improve sales management.

The selling agreement contains a further control device over dealers in the form of a uniform accounting system prescribed by General Motors and the requirement of monthly financial reports, 10-day reports, and sales and service records. These provisions are:

Accounts and Records—(A) Uniform Accounting System (sec. 15): It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them and which will enable Seller to prepare composite dealer-profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

(B) Examination of Accounts and Records: In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

Ten-Day Report (sec. 2B): In order to permit Seller to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales, Dealer will furnish Seller, every ten (10) days, with a report known as the "Ten-Day Report" on standard forms supplied by Seller. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

Sales and Service Records (sec. 18): In furtherance of the purpose, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

These provisions provide the manufacturer with a complete picture of the operation and financial status of the dealer at all times, including his unit profits and trade-in allowances.

The selling agreement gives General Motors the right to ship all vehicles by whatever mode and from whatever point it may select. It provides:

Car Shipment and Transportation Charge (sec. 4) (A): Seller has the right to ship all motor vehicles and chassis purchased by Dealer hereunder by whatever mode of transportation and from whatever point it may select. However, Seller will endeavor, whenever practicable, to follow Dealer's request with regard to routing.

(B) * * * Dealer will pay Seller, in addition to the prices otherwise provided for herein, transportation charges to be determined and set by Seller * * *

Many dealers have objected to this transportation charge on the ground that they would be able to save money by making their own contracts for hauling. Dealer Don B. Robbins stated:

In both 1954 and 1955 I had experience with the factory which illustrates one of the ways in which a dealer's ability to effect economies is restricted. These economies, if allowed, would permit me to pass on savings to my customers, the public.

The total freight charge for bringing a load of four cars from Flint to Fort Smith, Ark., averages approximately \$600. That is the amount which GM bills me; out of that they pay their contract carrier. In the spring of 1954, I had received a firm offer from E. M. Curtis Transport Co., a local licensed, insured carrier, to haul that same truckload for \$380. I went to Flint and, as a part of our discussion in connection with a termination threatened, asked for per-

mission to realize the savings of \$220 which would have placed me in a better position to compete with bootlegged new automobiles. My request was summarily denied and I was advised that I had no problems which the supermarket approach to selling cars would not overcome. Since most of the cars sent me actually come from the assembly point in Kansas City rather than in Flint, Mich., I strongly suspect that the real basis for their refusal was profits derived from phantom freight, particularly since I understand on good authority that GM pays their carriers on the basis of 46 cents a load mile or approximately \$184 a truckload. This amount plus rail freight on parts to Kansas City is included as an item on the factory invoice to me (VII, 3390).

General Motors replied to such complaints by stating that if individual haulage contracts were permitted, the orderly flow of finished automobiles from the plant would be dependent upon arrival of numerous independent haulers, and that accurate traffic schedules would be difficult to achieve.

Other provisions in the selling agreement charge the dealer with complete responsibility for all aspects of customer relations.

Customer Complaints (sec. 19): Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to securing and maintaining the goodwill of the public toward Chevrolet products.

Care of Owner (sec. 21): Conditioning of New Motor Vehicles—Dealer will condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

Owner's Service Policy: Dealer will execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an 'Owner's Service Policy', on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy and expressly authorizes Seller to charge his account with coupons covering inspections on new Chevrolet motor vehicles sold by Dealer and performed by other Chevrolet dealers under such 'Owner's Service Policy'.

Stock of Parts: Dealer will carry in stock at all times during the life of this Agreement an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.

Representation as to Parts: Dealer will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any part or parts which are not in fact genuine new Chevrolet repair parts as defined in subsection A of Section 10 of this Agreement.

Special Tools: Dealer will buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to Chevrolet owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which shall not exceed One Hundred Fifty Dollars (\$150.00) as Seller deems essential to service such new models properly. Dealer will pay for such new-model tools promptly on receipt thereof.

Flat Rate System (sec. 21G): For policy, warranty, and any other work performed by Dealer for Seller's account, Dealer will install the Chevrolet Flat Rate System of time allotments as recommended and furnished by Seller and charge Seller on the basis of such time allotments at a minimum of sixty-five percent (65%) of the labor rates related thereto as agreed upon with Seller.

Customer Relationship: Dealer will make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and will establish regular contact either by correspondence or personal interview with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied shall be promptly reported to Seller with the name of the owner making same.

The agreement provides for an advertising fund, which represents the assumption of additional managerial prerogatives by the manufacturer.

Advertising Fund (sec. 24): Seller will collect Twenty Dollars (\$20.00) for each new Chevrolet motor vehicle purchased by the Dealer * * * Seller (General Motors) will pay into the advertising fund the sum of Six Dollars (\$6.00) * * *

The agreement further provides that the corporation may use this fund at such times and in such ways as, in the opinion of General Motors, will most effectively benefit the dealer. The amount of the dealer's contribution is established, and the manner in which it is to be used is determined unilaterally by the manufacturer.

Dealers complain about other requirements in the selling agreement concerning advertising expenditures. Dealer Don B. Robbins at one time refused to purchase a spring announcement kit, which included chandelier dangles, window banners, etc. He received the following telegram (VII, 3391) :

Please have orders for the spring announcement kit in no later than Monday March 15. *This is to be a hundred percent participation.* This is as important as the January announcement. Let's make it a good one.

/s/ QUINNITT, Buick.

[Italics supplied.]

Mr. Quinnett is the district manager. After receiving this telegram, Mr. Robbins then purchased the kit. This is what dealers call a "must" demand. Mr. Robbins testified that the district manager later visited him and attempted to retrieve the telegram. The district manager, at that time, advised Robbins that General Motors had reprimanded him because demands are not to be in black and white (VII, 3392).

Dealers testified that they had been compelled to order initials for dashboards, signs, advertising banners, sales aids, film services, moving picture projectors, salesmen's equipment, printed advertising, parts bins, display boards, rugs for display rooms, office filing and records systems, and many other items. The testimony indicated that a very large percentage of such items are sold to the dealers at the time of renewal of their contracts. At that time, the dealer is subject to the fear that if he refuses to purchase these items, his franchise will be denied him by way of retaliation.

Dealer Kaminsky expressed his attitude toward these practices when he said :

* * * we get pressure all the time, everytime anybody came in, we had pressure. * * * "Sell more automobiles." "Put on more salesmen." "Spend more money"—they always could find a way for us to spend our money (VII, 3308).

Mr. Curtice testified that since the early 1920's, General Motors has continually revised its selling agreement to improve its relationships with the dealer organization. Some of the more important changes he listed are (VII, 3500-01) :

1. In the event of a price reduction, either on current models or on comparable new models, the dealer is reimbursed for the difference between the old and new price on new cars in stock when the price change is made.

2. A price allowance is made in the event the dealer has on hand at the time of new model announcement more than 3 percent of the cars purchased in the prior model year.

3. The dealer has the right to return any purchased parts or accessories within 30 days from the day he received them.

4. To protect the dealer against loss from obsolescence on his parts inventory, he may return at the beginning of each year parts up to 2 percent of his previous year's purchases.

5. A dealer is enabled to arrange for a son or son-in-law who is active in the business to succeed him in the event of death or incapacity.

6. Selling agreements now have a specified expiration date and any interim terminations by a division are limited to causes stated in the agreement.

7. The selling agreement specifies certain obligations by the division to the dealer upon termination, such as:

(a) An additional quantity of new cars to fill bona fide retail orders.

(b) Repurchase by the division of new cars, specified parts and accessories, and signs and tools.

(c) Specified compensation for loss on leased or owned premises.

The changes in the selling agreement referred to by Mr. Curtice are obviously steps in the right direction. William F. Hufstader, vice president of General Motors, in answer to the Subcommittee's question as to what specific action the corporation took in conformity with the recommendations made by the Federal Trade Commission in its 1939 study of the motor industry, replied, "I would say in answer to your question that we have continued to endeavor to improve our relationships" (VII, 3814). It does not appear that any concerted effort was made by the corporation to remedy the inequities which the Commission found in the franchise.

The most troublesome provisions of the selling agreement are those dealing with cancellation. They determine the conditions under which the manufacturer may terminate or refuse to renew the dealer's franchise. A dealer has a one-purpose operation. His right to carry on this operation is wholly dependent upon General Motors.

General Motors may terminate the selling agreement, to be effective 3 months after receipt of notice, for the following specified causes (VIII, appendix B, XXIV):

- (1) Failure to develop territory to satisfaction of seller;
- (2) Failure of dealer to devote full time and attention to the business;
- (3) Failure to maintain a business satisfactory to seller, including salesroom, parts and accessories facilities, etc.;
- (4) Failure to meet and maintain capital requirements;
- (5) Failure to maintain proper accounts and records;
- (6) Failure to employ sufficient sales staff;
- (7) Failure to keep up-to-date sales and service records;
- (8) Failure to investigate and handle customer complaints; and
- (9) Failure to condition new vehicles, fulfill conditions of "owner service policy," carry adequate assortment of parts, correctly represent genuine parts in the repair trade, buy special tools, employ sufficient mechanics, install flat rate system, make warranty adjustments, make a reasonable effort to satisfy owners of motor vehicles, and permit seller to check dealer's service facilities, stock of parts and accessories.

Each of the requirements above enumerated must be complied with "to the satisfaction of seller," under section 25 B (2) of the franchise. The seller (General Motors) is sole judge of whether any of these

provisions are violated. To obtain the franchise the dealer agrees to these terms.

General Motors has rarely exercised its practically unrestricted right to terminate the franchise. It simply refuses to renew at the expiration of the 1-year selling agreement. However, the termination provision may assume real importance with the extension of the franchise from 1 to 5 years. An attempt was made to learn the position which the corporation would take in the future under this clause. In particular, we sought to ascertain whether the termination provisions raised issues which the dealer could litigate. Henry M. Hogan, General Counsel, said: "Here is a clause that is drawn. It is not ambiguous. It is very clear. You want to know if it means what it says. The answer is yes. It does mean what it says" (VII, 3696). He further stated that as the law now stands he could defeat a dealer's suit on the pleadings in any action brought for improper termination (VII, 3698). It would appear from the expressed attitude of company officials that the extension of the 1-year selling agreement to 5 years, without appropriate amendments to other provisions, leaves the dealer little better off than previously. The company retains its unlimited right of termination and the dealer has no rights which he can assert in court.

In the event of termination of the selling agreement, the manufacturer agrees to repurchase all unused new vehicles, parts for the current and three preceding models, and accessories purchased in the immediately preceding 6 months. The dealer, however, has a specialized facility and his best opportunity to retire with minimum loss is to sell to another person who desires the dealership. Since a prospective purchaser must satisfy General Motors as well as the retiring dealer, the number of potential purchasers is limited. The key to the door of the dealership does not accompany the physical facilities, but is included with the selling agreement. Thus, even after termination, the manufacturer retains some power over the dealer. It was reported that when Lee C. Anderson, Buick-Pontiac-Chevrolet dealer, Lake Orion, Mich., was notified of the termination of his franchise, he was asked what he would "do with a building without a franchise?" (VII, 3333). The dealer with means can hold out, but the dealer who rents his property, or who has financial commitments must accept the best offer for his dealership, frequently a prospect steered to him by General Motors.

In studying the problem of dealer franchise terminations, it was determined that from 1952 to 1954, terminations increased from 5 percent of the total number of dealers in 1952 to 10 percent in 1954. The corporation classifies terminations in three categories: Nonrenewals, involuntary terminations, and voluntary terminations. Nonrenewals are cases in which the corporation elects not to renew a sales agreement at the end of the year. Involuntary terminations include those attributable to death, sale of business, etc. Also included in this category is termination by the corporation upon notice prior to the ending of the sales agreement. Voluntary terminations include dealers who sell out or retire of their own volition.

From 1951 through the first 10 months of 1955, terminated selling agreements are shown by the corporation as follows (VII, app. B, XVII) :

	1951	1952	1953	1954	1955 ¹
Non renewals.....	59	120	162	150	178
Involuntary terminations.....	160	199	202	192	210
Voluntary terminations.....	951	1,234	1,532	1,908	1,580

¹ 10 months.

These figures must be interpreted by reference to specific cases. For example, Elden E. Conrad, probably classified under voluntary terminations, testified that his zone manager gave him 10 days to sell out or the "heat would be put on him" (VII, 3423). Edgar H. Zimmer testified that he "sold out before he was fired" (VII, 3400).

Nonrenewal and involuntary termination can be appealed to a dealer relations board established in 1939 as the corporation's court of last resort, to review the decisions of the divisions' general sales managers; 1 appeal was taken to the board in 1953, 9 in 1954, 7 in 1955, and 12 are pending. From 1938 through 1955, in cases actually reviewed by the board, there have been only a few reversals in favor of dealers (VIII, App. B, XVIII, XIX). At hearings before the board, only the dealer and members of his organization, without benefit of counsel, are permitted to appear and request reconsideration.

Dealers who have appeared before the board have severely criticized it as prosecutor, judge and jury. Lee C. Anderson claimed his franchise was terminated because he gave a speech in which he criticized the factory-employee discount plan (VII, 3323). Upon receipt of a nonrenewal letter, he appealed to the dealer relations board. Mr. Anderson charged that instead of investigating the basis for nonrenewal, the board asked questions such as: (1) Who wrote the speech?; (2) What's Art Summerfield (Postmaster General, United States) going to do for you now that your franchise is gone?; and (3) What assurance does General Motors have that no more speeches will be made? (VII, 3333, 3335). Mr. Anderson testified that the factory had never at any time complained about his facilities, sales standing or market penetration (VII, 3318). General Motors stated that Anderson's franchise was terminated because he was:

* * * irrevocably committed to a complete disagreement with General Motors' policy with respect to employee discount plan * * *. While decisions along this line are most usually predicated on a dealer's performance record, this case provides an example where basic differences between two parties make a sound business relationship impossible. Mr. Anderson's dissatisfaction with a personnel policy of General Motors, because, in his opinion, it adversely affected his business opportunities, was the basis of General Motors' dissatisfaction with Mr. Anderson (VII, 3715).

The question is whether it is possible to obtain an impartial decision of a dealer's case on the merits from a board appointed by and accountable to the other party to the dispute. Senator Francis Case revealed the basic weakness of the system when he elicited from Mr. Curtice the information that General Motors pays the salaries of board members (VII, 3781).

It has been suggested that the council-table approach to resolving disputes between dealer and manufacturer be adopted in place of the

present appeals board. Alfred P. Sloan, Jr., Chairman, General Motors Corp., in an address at NADA's banquet in Detroit on April 27, 1938, clearly voiced the sentiment that dealer councils are preferable to unlimited control, saying:

* * * I believe that you (automobile dealers) have a right to be heard as to those policies upon which your business life depends. You are entitled to an organized plan that permits you to sit around the council table and, in a cooperative way, express your views as to what should be done and what should not be done. And not only that, but I believe such a procedure to be an important step forward in what I might term "democracy in industrial management."

Later in his address, Mr. Sloan discussed a desirable model system of relationships between manufacturer, dealer, and consumer. He outlined the following constructive plan:

Therefore, the first component of our model should consist of two parts: first, a forum for discussion of policies as they affect the dealer and the manufacturer and involve the interests of the consumer and, second, ways and means for an impartial review of administrative decisions so that the right of all concerned may be broadly considered. This might be termed a "policy of equity."

Prior to the hearings, the present management had shown a reluctance to sit down around the conference table with dealer representatives for a mutual discussion of problems. Mr. Curtice said: "We have individual contracts with individual dealers" (VII, 3542).

The desire to negotiate with dealers individually highlights the problem of size. General Motors facing one of its 18,000 dealers at the bargaining table is hardly an example of equal bargaining power. The corporation has recognized the need for some dealer representation. A dealer council has been established within each division for the purpose of effecting better factory-dealer relationships. M. H. Yager characterized the manufacturer's council as "a loaded deal" (VII, 3461) because its members are dealers who have been carefully screened and nominated by their own zone manager.

The staff has not attempted an evaluation of the overall selling policies of General Motors. The dealers who testified were bitterly resentful of the pressure exerted upon them by General Motors to sell automobiles, parts, and accessories. However, these dealers represent but a handful of the total General Motors dealers. Furthermore, the consequences of this volume selling to consumers, suppliers, and the economy generally, may be considerably different than to the dealers.

Nevertheless, the mounting protests of dealers of all makes of cars from all sections of the country to the terms of the inequitable franchise center attention upon abuses resulting from great disparity of economic power. Dealer resentment is widespread and is not limited to the witnesses who testified. Senator A. S. Mike Monroney telegraphed Senator O'Mahoney reporting replies to questionnaires from 8,276 General Motors dealers. Of this number, 6,047 indicated they felt a need for congressional study or Federal legislation; only 869 felt there was no such need. According to 4,069 of those dealers, pressure from factories to take more cars than needed was one of the primary causes of bootlegging (VIII, 3897).

It seems clear that some effort should be made to equalize the balance of power now heavily weighted in the manufacturer's favor. General Motors strongly expressed its views, during the hearings, that operations under the present franchise system needs no revision, that

the factory must have exclusive authority over dealer terminations, and that its own dealer review board procedure guarantees the dealer complete justice. Testimony relating to General Motors' treatment of dealer appeals—referred to as "private government"—indicates that, by its very nature, a company-sponsored and company-dominated dealer review board is wholly unsatisfactory in resolving dealer grievances.

Enlightened management among automobile manufacturers could forestall much of the dealer criticism by bold steps to revise the franchise. George Romney, president of American Motors, indicated the type of industrial statesmanship needed. Shortly after the General Motors hearings, in a letter to the National Automobile Dealers Association, he proposed a broad program for dealer relief, involving elected dealer councils, periodic review with dealer councils of the sales franchise to make it fair, early consideration of a joint company-dealer appeal board, realistic measures to eliminate bootlegging and unsound inventory accumulation, and consideration of an annual profit-sharing plan with dealers. The independents, feeling more acutely the pinch of competition, are apparently more sensitive to dealer needs than the Big Three.

Reference was made during the hearings to proposals for submitting certain types of disputes to an impartial board for arbitration. Such a board might consist of factory, dealer, and public representatives. Alternatively, it was suggested that the Interstate Commerce Commission should have jurisdiction to review decisions of the General Motors dealer appeals board in order to assure nonpartisanship (VII, 3782). Such an approach has the merit of securing impartial settlement of these dealer problems, but may be more cumbersome and costly than the situation justifies.

Various States have enacted laws under the State police powers licensing both car manufacturers and dealers. Some of these laws provide for revocation of the manufacturer's license for unfair cancellation of a dealer's franchise, unfair threats to cancel, unfair non-renewal, coercion to take unordered goods, etc. Some statutes provide criminal penalties. The type of statute enacted by Wisconsin has been adopted by many other States. In 1955 Colorado enacted one of the most sweeping statutes in this field, amending its 1953 license law. In addition to requiring manufacturer-dealer licensing, as does the Wisconsin statute, the Colorado act provides that in any case where a manufacturer or his representative cancels or fails to renew any contract or franchise with a dealer, the cancellation or nonrenewal shall not become effective until and unless a court order shall have been entered. Pending the issuance of such a court order, an injunction may be obtained to halt the cancellation. The law also provides for recovery of treble damages from the manufacturer. General Motors recently petitioned for a three-judge Federal court to hear its suit attacking the constitutionality of this law.

Despite the vigorous assertions of General Motors officials at the hearings that dealers were treated fairly and no revision of the franchise was needed, the corporation announced in the early part of this year important changes in the selling agreement. The charges made at the public hearings before the Subcommittee by both former and current dealers indicated the manifest discontent among Gen-

eral Motors dealers and caused the company to undertake its own study resulting in the drastic revision of the franchise which the hearings showed were long overdue.

The drafting of the new franchise has not yet been completed for submission to the dealers. However, Mr. Curtice, in testimony before Senator Monroney's Subcommittee on Automobile Marketing Practices of the Interstate and Foreign Commerce Committee of the Senate, stated that for all practical purposes the revised selling agreement became effective March 1, 1956. Mr. Curtice stated he considered many of the changes revolutionary.

General Motors announced that a revised franchise would be offered the dealers with the following choices as to duration: (1) 5-year agreement cancellable by GM only for cause; (2) 1-year agreement cancellable by GM only for cause; and (3) indefinite term agreement cancellable by GM without cause on 90 days' notice.

Mr. Curtice stated that the new franchise would contain fair and objective tests for evaluating sales performance. Highly objectionable phrases such as "to the satisfaction of the dealers," etc., are to be eliminated, the net result being, according to the corporation, full mutuality of obligation in the contract. The proposed changes are numerous and affect many of the important phases of the factory-dealer relationship.

Basic revisions are proposed with reference to succession of qualified persons, continuation of dealership, participation by widow, liquidation in event of death, protection of premises in event of termination or nonrenewal, repurchase of parts, obsolescence allowance, allowance for models when new models are announced, warranties, factory advertising contribution, etc.

Because of the severe criticism leveled at the corporation's dealer relations board, an impartial arbiter or umpire, selected on the basis of special qualification and experience, will be engaged to supersede the board and adjudicate appeals. Counsel for dealers may be present at such appeals. The corporation announced that a new office, that of executive vice president in charge of dealer relations, was being created, to which Mr. Ivan Wiles, formerly general manager of the Buick division was elected, for the purpose of insuring that dealers would have a direct line of communication to the top management of the company.

While the franchise is not yet available for careful examination, it would seem that General Motors is making a genuine effort to remedy many of the more flagrant defects in the franchise. The quick response by the corporation to the dealers' expressed dissatisfaction with the franchise is heartening. It remains to be seen whether the revised selling agreement achieves all the needed reforms.

Approximately 30 bills have been introduced in the present session of the Congress dealing with a vast number of problems in the automobile industry. Some of these bills involve taxes, highways, protection of public under new-car warranties, and regulation of motor vehicles on the highways. Others deal more particularly with the problems of automobile marketing such as bootlegging, territorial security, phantom freight, coercion of dealers to take unwanted merchandise, freedom of choice to conduct business, and cancellation of franchises for reasons not specifically defined in the franchise. It

was not the purpose of this subcommittee to appraise all the different marketing practices to which these bills are directed.

The study by the Subcommittee of the relationship between General Motors and its dealers was concerned primarily with the consequence of General Motors' vast power vis-a-vis the dealer. The inequitable franchise was found to be the instrument by which the superior strength of the factory was manifested to the detriment of the dealer. Therefore, the Subcommittee sought to determine what course should be adopted to remedy the evident imbalance of power and to secure substantial justice for all. While some type of Federal legislation is believed to be necessary, it was felt that care should be taken to tailor the solution to the problem.

Legislation which would subject the industry to undue regulation, or require constant scrutiny by the Department of Justice or Federal Trade Commission of all the terms of dealer franchises, or make criminal conduct which cannot easily be defined goes far beyond what the situation requires. As clearly demonstrated at the hearings, there is real need to guarantee by law the right of a dealer to bring suit in court when the manufacturer has arbitrarily and without good faith terminated or refused to renew the franchise. General Motors asserts that its new franchise will be a valid bilateral contract whose provisions are enforceable at law by either party. However, the history of the automobile franchise has proved the dealer cannot afford to be dependent upon the whim of the factory to enforce his rights.

The proposal for an impartial umpire to supersede the dealer relations board, however laudable, is still untried and of questionable value. Furthermore, there appears to be no protection for the dealer who chooses, wisely or unwisely, to operate under the indefinite term contract cancellable without cause. More important, the franchise is apparently silent on the rights of dealers to renew at the expiration of the term. The investment of the dealer in both capital and long years of service requires protection from arbitrary and abusive action by the factory in refusing to renew. Only legislation which permits courts to review such conduct will insure the dealers' rights. It is felt that the threat of court review will act as a deterrent on the factory in engaging in various coercive practices.

The complete lack of mutuality in the franchises of the other automobile manufacturers further heightens the need for such legislation. Since the factories assert they do not terminate or refuse to renew except for valid reasons and after carefully considering the equities of the dealer, there would seem to be no reason for their opposing this legislation. While such a bill is not a panacea for all dealer problems, it seeks in the simplest way to equalize the power between factory and dealer by enabling the dealer to secure impartial settlement of his basic grievance.

THE AUTOMOBILE MARKETING PRACTICES STUDY

INTERIM REPORT

OF THE

SUBCOMMITTEE ON AUTOMOBILE MARKETING PRACTICES

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE



JULY 28, 1955

Printed for the use of the Committee on Interstate and
Foreign Commerce

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[COMMITTEE PRINT]

JULY 28, 1955

84TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. —

INTERIM REPORT OF A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

THE AUTOMOBILE MARKETING PRACTICES STUDY

Mr. Monroney from the Subcommittee on Automobile Marketing Practices submitted the following interim report.

The Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce was appointed by Chairman Magnuson on March 9, 1955, to inquire into and make a thorough investigation of "all phases of automobile marketing practices especially considering 'phantom freight' charges and other accessorial charges that influence the price of automobiles to the purchaser, and also, of automobile 'bootlegging.'"

It should be noted that hearings were held on S. 3596 of the 83d Congress, 2d session. This was a bill introduced June 11, 1954, by Senator Dirksen. Its purpose was to amend the Federal Trade Commission Act to allow manufacturers of automobiles to cancel franchises of dealers who knowingly sold new automobiles to unauthorized persons for resale and to permit such manufacturers to provide for such cancellation in these franchises.

In these hearings it appeared that many automobile dealers were in economic difficulties. However, there was considerable variation of opinion as to the cause of these difficulties and as to what should be done legislatively to remedy the situation. Also, the manufacturers of automobiles and consumer interests were not heard from.

In January after complaints had been received from dealers throughout the Nation urging congressional action in the field of automobile distribution, and after the National Automobile Dealers Association had passed various resolutions at their annual convention urging specific legislation be passed, your committee directed that the present study be made.

In view of the fact that the manufacture and distribution of automobiles is probably the most important single industry in the economy of the United States, and also in view of the fact that the problems attending to the distribution of automobiles are technical in nature and tremendous in scope, it was determined that a careful back-

ground study should be proceeded with before hearings were held and legislation recommended.

Consequently, the subcommittee appointed a staff and a background study has been and is in progress.

As regards bootlegging the subcommittee staff has obtained and is in the process of obtaining figures from the various States which require licenses for automobiles transported under their own power or in tow into or through such States. It is expected that these figures will give a measure to the incidence of this practice and will, therefore, suggest the seriousness with which it should be regarded. Also in this area of the study, interviews with franchised dealers and used-car dealers and scrutiny of the monthly sales records as reflected in trade publications have been compiled.

With regard to phantom freight the subcommittee staff has developed material showing the difference between the actual cost of freight and the freight charged to the dealer and to the public. Also, it has compiled the economic justifications for and arguments against such freight differentials. In gathering this material the staff has conducted extensive interviews with representatives of the manufacturers and with the National Automobile Dealers Association. A substantial amount of material has been submitted showing the effects of a change to other systems.

As regards the general field of factory-dealer relationships the subcommittee staff has developed a file of dealers' complaints. It should be noted that the complaints are unverified and constitute, more or less, a bill of particulars to be used at such time as the subcommittee determines hearings shall be held. In connection with the study of industry practices the staff has done a legal analysis of the contracts under which dealers operate and the bills passed in the various State legislatures and in the House of Representatives dealing with this problem.

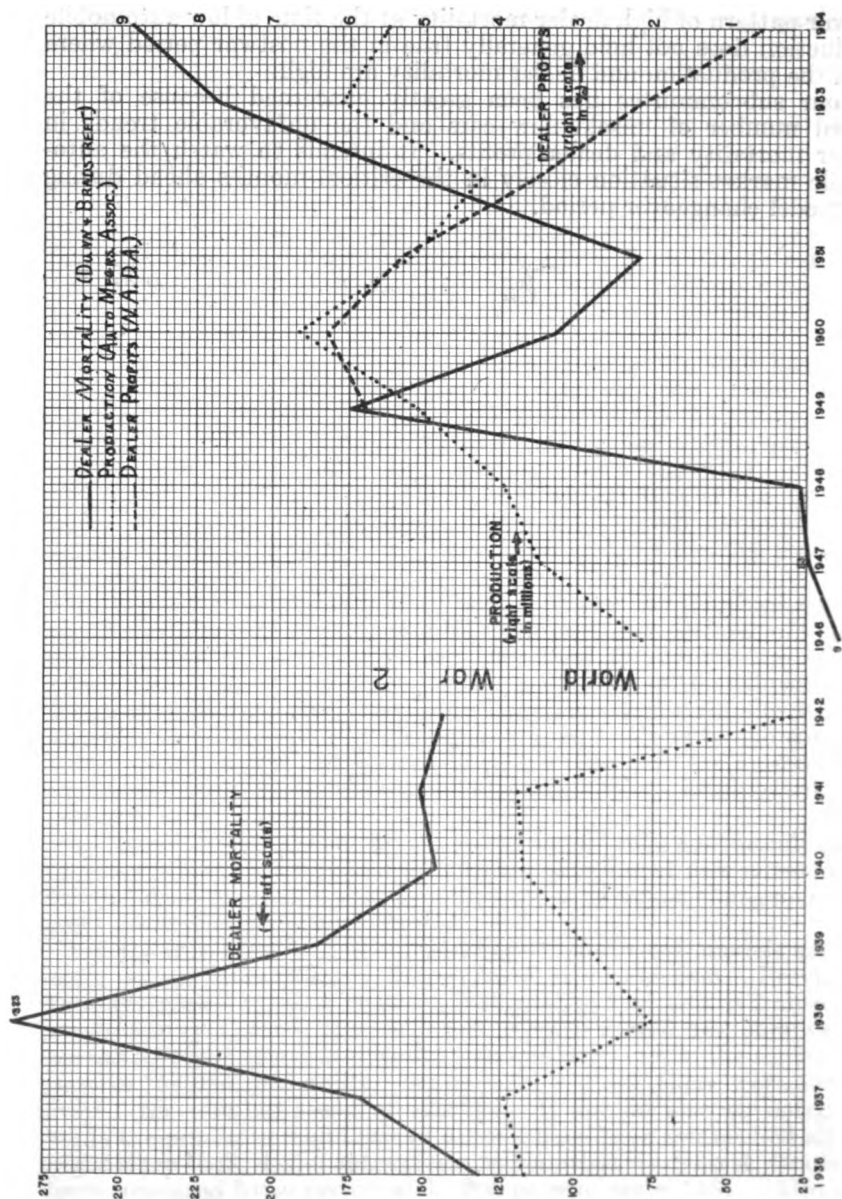
It should be noted that during the spring of 1955 automobile manufacturers and dealers have sold a record number of new automobiles. We feel that this was primarily attributable to model changeovers and good general economic conditions.

On the other hand, a record number of unsold new models are presently on the market due to record levels of production. Previous to 1955 the record number of new car stocks (in field and in transit) was reached May 1, 1954, at which time 607,275 unsold new cars were reported by the Automotive News. As of May 1, 1955, the same source reports 757,856 such units. As of June 1, 1955, there were 848,498. July 1 the number stood at 820,291. It should also be noted that while the production and sale of automobiles have established all-time highs since 1948, dealer mortalities as reported by Dun & Bradstreet have increased by approximately 200 percent since 1951. Also average dealer operating profits before taxes as reported by the National Automobile Dealers Association have dropped from approximately 6.3 percent on sales in 1950 to approximately 0.6 percent on sales for the year 1954.

Attached hereto is a chart showing automobile production and dealer mortality since 1936. Also shown is the average dealer profit on sales as submitted by the National Automobile Dealers Association. It is interesting to note in connection with this chart that the

prewar pattern of high dealer mortality at the time of low automobile production does not hold generally true in the postwar period where both the production and dealer mortality are high.

Your subcommittee has been greatly concerned because of the record number of unsold new cars and the unfavorable trends in dealer mortality and dealer profits. It intends to watch the automobile market situation closely in the critical months ahead during the model changeover period.



THE AUTOMOBILE MARKETING PRACTICES STUDY

REPORT

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE



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REPORT OF A SUBCOMMITTEE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

THE AUTOMOBILE MARKETING PRACTICES STUDY—RESULTS OF 19,113 DEALER QUESTIONNAIRE RETURNS

Mr. Monroney for himself, Mr. Payne, and Mr. Thurmond of the Subcommittee on Automobile Marketing Practices submitted the following:

This Subcommittee on Automobile Marketing Practices of the Senate Committee on Interstate and Foreign Commerce was appointed by Chairman Magnuson on March 9, 1955, to inquire into and make a thorough investigation of "all phases of automobile marketing practices."

Hearings were held on this subject in July 1953. In these hearings it appeared that many automobile dealers were in economic difficulties. However, there was considerable variation of opinion as to the cause of these difficulties and as to what should be done legislatively to remedy the situation. Also, the manufacturers of automobiles and consumer interests were not heard from. No legislation was reported for the consideration of the Senate at that time. Since this previous study had not been completed, and since various abuses in the field of automobile marketing continued, and in fact, appeared to increase, Chairman Magnuson directed that the present thorough study be made.

During 1954, complaints continued to be received by the committee from dealers throughout the Nation urging congressional action in the field of automobile distribution, and the National Automobile Dealers Association later passed various resolutions at their annual convention urging specific legislation.

The investment of the automobile manufacturers in the United States amounts to approximately \$7½ billion and manufacturers employ about 780,000 persons. The total investment of franchised dealers is estimated to be nearly \$5 billion, and automobile dealers employ about 667,800 persons. This is approximately 9.7 percent of total retail employment in the United States. The investment of the 42,000 dealers average approximately \$118,000 each. The continuous service by the traditional pattern of family-owned dealerships, in many cases now operated by the third generation, is an example of small business free enterprise in the true American tradition. Furthermore, keen competitive merchandising practices by the automobile dealers of America have been a major factor in the building of this mass-production industry from the Stanley Steamer to today's streamlined, powerful, modern automobile. Mass production of these cars surpasses by many times the totals of automobile sales and production of the rest of the world.

In view of these facts it is readily apparent that the automobile industry represents one of the cornerstones of the American economy

and the size and prosperity of this industry depends upon sales to the ultimate consumer.

It was therefore determined by the subcommittee that a careful background study should be undertaken before hearings were held or legislation recommended. Voluminous factual data were gathered from the various governmental and industry sources. Statistics and other materials have been developed by the subcommittee staff with regard to the following areas of inquiry:

- (1) Automobile bootlegging
- (2) Phantom freight
- (3) Factory-dealer relations
- (4) Automobile installment credit

Also under consideration by the subcommittee are false and misleading advertising and other questionable practices which have crept into the field of automobile marketing.

Because there are but five major automobile manufacturers in the United States, the positions of these manufacturers regarding the above areas of inquiry were easily available. Extensive interviews between the subcommittee staff and the manufacturers' representatives were held and much data were developed along these lines.

It became apparent, however, that much diversity of opinion regarding the above problems was manifested by the approximately 42,000 automobile dealers. It was maintained by most manufacturers that their particular dealers had nothing to complain about and that the committee heard only the voices of those few dealers who were unable to survive in the competitive American free-enterprise system. The manufacturers repeatedly claimed that this represented only a small fraction of the total of 42,000 dealers.

Partially because of this conflict of opinion and partially because the subcommittee felt it should develop firsthand information, the subcommittee prepared and sent questionnaires directly to each automobile dealer insofar as this was possible. This was done in September, 1955.

As of January 1, 1956, the subcommittee has received approximately 19,500 returns. For purposes of tabulation the first 19,113 questionnaires returned constitute the entire sample.

The subcommittee feels that this is the most complete expression of dealer opinion that has ever been collected and is possibly the largest percentage of questionnaire returns ever received by a congressional committee on a voluntary basis.

A large part of this surprisingly strong response may have been due to the fact that the subcommittee assured the dealer that his identity would be kept in strictest confidence, and the dealer was requested, but not required, to sign the questionnaire.

The subcommittee feels the failure of nearly one-fourth of the dealers to sign the questionnaire, although they were interested enough to complete and return it, has significance. The subcommittee has conducted a series of spot checks in various sections of the United States in order to supplement the results of its questionnaire with personal interviews. Fear of retaliation by factory zone and district sales managers has been mentioned many times by dealers in these personal interviews.

It should be noted that generally the questionnaire is divided into four types of questions as follows: (a) Whether or not the dealer feels

that there is need for congressional study or Federal legislation (question 1); (b) dealer classification—the make of automobile, size of community, whether suburban, length of time a dealer, etc. (questions 2, 3, 4, 5, 6, 7, and 18); (c) the dealer's opinion regarding the necessity for legislation presently proposed and pending in the House of Representatives (questions 12, 13, 15, 16, 17, and 19) and (d) questions designed to allow the dealer to comment on conditions in the automotive industry (questions 8, 9, 10, 11, 14, and 20).

For purposes of correct statistical analysis and cross analysis, answers for each questionnaire were compiled on punchcards allowing tabulation by machines. It should be noted in this connection that question 20 and one part of question 10 require discretionary grading and could not be properly analyzed in this manner within the time allotted.

However, because of the importance of question 20, a fair sample of these will be printed in full in the appendix of this report. Answers to the discretionary part of question 10 will be analyzed at a later date.

It should be also noted that question 3 is omitted at this time because of faulty mechanical tabulation. However, the staff by proper sampling methods had determined that approximately 65 percent of the dealers answering question 3 stated they had held only 1 franchise in the past 20 years; 23 percent had held 2; 7.5 percent had held 3; and the remaining 4 percent had held more than 3.

It is further pointed out that in each case in which the dealer refused to answer the question in the space allotted or attempted to answer the question in an equivocal manner, the answer is tabulated as "other." If the dealer did not answer the question the answer is tabulated as "no answer."

Although the questionnaire lends itself to separate tabulation of the views of the dealers of each automobile manufacturing company, the subcommittee, has not felt that such tabulation properly reflects the the approach of the subcommittee. The subcommittee has consistently attempted to deal with the problems involved on an industrywide basis rather than with the problems of the individual corporations in the industry.

The one exception to this was made by the chairman during the course of the hearings held by Acting Chairman O'Mahoney of the Antimonopoly Subcommittee of the Senate Judiciary Committee. During these hearings there arose the question of whether or not automobile bootlegging was increased by the forcing of unwanted cars on General Motors dealers by the General Motors Corp. Also the question arose as to whether or not dealer unrest was reflected by a substantial number of General Motors dealers. Since this question had arisen, the chairman of this subcommittee felt it necessary, in order to protect the public record of a Senate committee, to submit the following figures to the O'Mahoney subcommittee by telegram dated December 9, 1955—

8,276 General Motors dealers voluntarily replied to the questionnaire; 6,047 of them indicated they felt there was a need for congressional study or Federal legislation with regard to automobile dealer problems in the field of automobile marketing; 860 felt there was no such need. The remainder either did not answer this particular question or answered miscellaneous. 4,069 indicated "pressure from factories to take more cars than needed" was one of the primary causes of bootlegging.

This subcommittee may from time to time during the course of its hearings develop further statistics involving the answers of the dealers of each automobile manufacturing company as the need for such data arises. However, the identities of individual dealers will at all times retain their confidential status.

The subcommittee is fully aware of the fact that the questionnaire return, although the broadest expression of automobile dealer opinion ever developed, is not a 100-percent sample of dealer opinion. Recognizing this limitation, the subcommittee feels that the results are very significant and releases them herewith. The subcommittee further feels that this questionnaire, supplemented by personal subcommittee "spot checks" and by statistical and other factual data developed during the past 10 months, affords an excellent basis for hearings at this time.

QUESTIONNAIRE

1. Do you feel there is need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing?

Yes.....	13, 749
No.....	1, 991
No answer.....	3, 181
Other.....	192

Total.....	19, 113
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2. For what make(s) is your present franchise?

	<i>Number of replies</i>		<i>Number of replies</i>
Buick.....	1, 853	Hudson.....	395
Cadillac.....	953	Lincoln-Mercury.....	1, 056
Chevrolet.....	3, 887	Nash.....	503
Chrysler-Plymouth.....	1, 569	Oldsmobile.....	1, 894
DeSoto-Plymouth.....	1, 233	Packard.....	661
Dodge-Plymouth.....	1, 786	Pontiac.....	1, 804
Ford.....	3, 169	Studebaker.....	871
Kaiser-Willys.....	462	Foreign and other.....	371

3. During the past 20 years with how many automobile manufacturing companies have you held franchises? (Deleted because of faulty mechanical tabulation.)

4. How long have you been a franchised new car dealer?

(a) Less than 5 years.....	2, 411
(b) 5 to 10 years.....	4, 566
(c) 10 to 15 years.....	2, 515
(d) 15 to 25 years.....	4, 388
(e) More than 25 years.....	5, 124
No answer.....	109

Total.....	19, 113
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5. In what State is your dealership located?

State	Total	State	Total
Alabama.....	254	New Hampshire.....	83
Arizona.....	113	New Jersey.....	546
Arkansas.....	222	New Mexico.....	109
California.....	1, 034	New York.....	1, 313
Colorado.....	283	North Carolina.....	470
Connecticut.....	222	North Dakota.....	187
Delaware.....	30	Ohio.....	962
District of Columbia.....	38	Oklahoma.....	349
Florida.....	296	Oregon.....	233
Georgia.....	335	Pennsylvania.....	1, 282
Idaho.....	145	Rhode Island.....	98
Illinois.....	896	South Carolina.....	246
Indiana.....	620	South Dakota.....	190
Iowa.....	561	Tennessee.....	290
Kansas.....	527	Texas.....	906
Kentucky.....	300	Utah.....	125
Louisiana.....	214	Vermont.....	88
Maine.....	158	Virginia.....	383
Maryland.....	203	Washington.....	379
Massachusetts.....	472	West Virginia.....	228
Michigan.....	750	Wisconsin.....	640
Minnesota.....	546	Wyoming.....	80
Mississippi.....	263	Hawaii.....	6
Missouri.....	406	Alaska.....	5
Montana.....	164	Canada.....	3
Nebraska.....	333	No answer.....	490
Nevada.....	37		
		Total.....	19, 113

6. Is the population of your community—

(a) Under 2,500.....	3, 557
(b) 2,500 to 25,000.....	9, 539
(c) 25,000 to 75,000.....	2, 972
(d) 75,000 to 250,000.....	1, 392
(e) 250,000 to 500,000.....	490
(f) Over 500,000.....	1, 057
No answer.....	106

Total..... 19, 113

7. If the population of your community is under 25,000 are you located within 25 miles of a metropolitan area?

Yes.....	4, 506
No.....	8, 362
No answer.....	6, 095
Other.....	150

Total..... 19, 113

8. Is new car "bootlegging" (discount selling to nonfranchised dealers for resale) in your area seriously detrimental to your business?

Yes.....	11, 552
No.....	6, 463
No answer.....	542
Other.....	556

Total..... 19, 113

9. Compared with last year has "bootlegging" in your area—

(a) increased.....	7, 268
(b) decreased.....	2, 175
(c) remained about the same.....	9, 017
No answer.....	481
Other.....	172

Total..... 19, 113

10. Considering all costs and servicing does the purchaser of a "bootlegged" car, in your area, save money—

Yes.....	2, 897
No.....	14, 692
No answer.....	1, 006
Other.....	518

Total..... 19, 113

If the answer to question 10 was "Yes," in what way does the purchaser save money?

Answered	3, 210
No answer.....	15, 903

If the answer to question 10 was "No," in what way does the purchaser lose money? (Check one or more.)

(a) Purchaser pays more for car.....	1, 925
(b) Purchaser fails to receive warranty protection.....	14, 372
(c) Purchaser receives car with uncertain or false mileage.....	13, 563
(d) Makes provision of adequate new-car servicing by dealer difficult.....	10, 899
(e) Purchaser pays higher finance charge.....	8, 904
(f) Other.....	1, 573
No answer.....	3, 440

11. Is new car "bootlegging" caused primarily by (check one or more)—

(a) Vigorous competition.....	2, 990
(b) Overproduction.....	13, 581
(c) Weak dealers.....	6, 660
(d) Too many dealers in territory.....	3, 522
(e) Freight differential.....	3, 979
(f) Unethical franchised dealers.....	9, 956
(g) Lack of territorial security.....	6, 802
(h) Pressure from factory to take more cars than needed.....	10, 992
(i) Fictitious fleet accounts.....	3, 818
(j) Other.....	667
No answer.....	501

12. Are you in favor of legislation allowing manufacturers to cancel franchises of dealers who sell cars to unauthorized persons for resale?

Yes.....	14, 185
No.....	3, 411
No answer.....	896
Other.....	621

Total..... 19, 113

13. Do you feel that such legislation would effectively curtail "bootlegging"?

Yes.....	11, 453
No.....	4, 727
No answer.....	1, 680
Other.....	1, 253

Total..... 19, 113

14. Is the freight on delivery of new vehicles charged to you—

(a) More than the actual cost of freight.....	5, 398
(b) Less than the actual cost of freight.....	472
(c) Do not know.....	11, 042
No answer.....	842
Comment only.....	1, 359

Total..... 19, 113

15. Do you feel that dealers should be allowed to specify the mode of transportation in delivery of new cars from factory or assembly plants?

Yes.....	15, 331
No.....	2, 227
No answer.....	1, 226
Other.....	329

Total.....	19, 113
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16. Do you feel that the dealer should be allowed to pay the actual freight cost directly to the carrier which delivers his cars?

Yes.....	11, 730
No.....	4, 327
No answer.....	2, 665
Other.....	391

Total.....	19, 113
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17. Are you in favor of elimination of "phantom freight"?

Yes.....	14, 891
No.....	984
No answer.....	3, 074
Other.....	164

Total.....	19, 113
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18. Prior to 1950 did you operate under a contract which allowed manufacturers to impose penalties on sales outside your franchised territory? That is, did you operate under a territorial security clause?

Yes.....	10, 716
No.....	6, 335
No answer.....	1, 714
Other.....	348

Total.....	19, 113
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19. Do you favor the return to such a system?

Yes.....	8, 693
No.....	7, 766
No answer.....	2, 165
Other.....	489

Total.....	19, 113
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20. Have you any further comments regarding conditions in the automotive industry today?

Answered.....	8, 753
Answers requiring separate sheet.....	417
No answer.....	9, 942

There is no requirement that you sign this questionnaire. If you care to do so, the subcommittee will appreciate it, and will not, under any circumstances reveal your identity.

Signed.....	14, 404
Not signed.....	4, 708

 (Name)

 (Address)

1. Do you feel that there is need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing?

State	Totals	Yes	No	No answer	Other
Alabama.....	254	202	20	31	1
Arizona.....	113	68	17	26	3
Arkansas.....	222	152	32	35	—
California.....	1,034	740	118	170	6
Colorado.....	283	215	17	47	4
Connecticut.....	222	161	32	26	4
Delaware.....	30	19	5	5	1
District of Columbia.....	38	27	8	2	1
Florida.....	298	219	25	51	1
Georgia.....	335	233	32	67	3
Idaho.....	145	105	17	23	—
Illinois.....	898	644	90	149	13
Indiana.....	620	464	45	105	6
Iowa.....	561	409	44	99	9
Kansas.....	527	412	40	74	1
Kentucky.....	300	221	24	50	5
Louisiana.....	214	174	16	21	3
Maine.....	158	109	21	26	2
Maryland.....	203	134	29	36	4
Massachusetts.....	472	352	42	69	9
Michigan.....	750	483	116	143	8
Minnesota.....	546	388	54	101	8
Mississippi.....	263	185	26	51	1
Missouri.....	406	302	36	65	3
Montana.....	164	105	21	36	2
Nebraska.....	333	233	41	59	—
Nevada.....	37	31	4	2	—
New Hampshire.....	83	62	8	11	2
New Jersey.....	546	434	45	60	7
New Mexico.....	109	88	7	14	—
New York.....	1,313	994	144	163	12
North Carolina.....	470	367	25	71	7
North Dakota.....	187	132	22	30	3
Ohio.....	962	646	135	168	13
Oklahoma.....	349	252	19	76	1
Oregon.....	233	159	31	42	1
Pennsylvania.....	1,282	934	143	185	20
Rhode Island.....	98	77	6	14	1
South Carolina.....	246	187	17	39	3
South Dakota.....	190	116	22	48	4
Tennessee.....	290	209	29	47	5
Texas.....	906	690	79	129	8
Utah.....	125	92	11	22	—
Vermont.....	88	64	9	15	—
Virginia.....	383	253	59	65	6
Washington.....	379	246	52	75	6
West Virginia.....	228	155	28	44	1
Wisconsin.....	640	444	69	124	3
Wyoming.....	80	59	10	11	—
Hawaii.....	6	4	1	1	—
Alaska.....	5	4	—	1	—
Canada.....	3	2	1	—	—
No answer.....	490	292	47	151	—
Totals.....	19,113	13,749	1,991	3,181	192

1. Do you feel that there is need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing?

4. How long have you been a franchised new-car dealer?

	Totals	Less than 5 years	5 to 10 years	10 to 15 years	15 to 25 years	More than 25 years	Not stated
Yes.....	13,749	1,732	3,258	1,863	3,215	3,648	33
No.....	1,991	286	501	237	417	536	14
No answer.....	3,181	370	765	395	721	870	60
Other.....	192	23	42	20	35	70	2
Totals.....	19,113	2,411	4,566	2,515	4,388	5,124	109

State	Totals	6. Is the population of your community—						
		Under 2,500	2,500 to 25,000	25,000 to 75,000	75,000 to 250,000	250,000 to 500,000	Over 500,000	No answer
Alabama.....	254	35	140	44	21	3	10	1
Arizona.....	113	11	69	6	21	6		
Arkansas.....	222	34	142	35	11			
California.....	1,034	46	429	243	145	64	104	3
Colorado.....	283	55	156	34	8	6	24	
Connecticut.....	222	4	85	86	40	5		2
Delaware.....	30	7	12		9			1
District of Columbia.....	38		2		1		34	
Florida.....	296	13	156	75	31	12	9	
Georgia.....	335	53	198	48	22		12	2
Idaho.....	145	22	69	22				1
Illinois.....	896	180	407	146	42		116	
Indiana.....	620	106	341	92	50	11	17	3
Iowa.....	561	201	263	68	26			
Kansas.....	527	171	289	28	28	3		4
Kentucky.....	300	65	156	52	8	5	2	
Louisiana.....	214	28	119	33	22	10	5	
Maine.....	158	17	117	15				2
Maryland.....	203	34	80	37	12		28	2
Massachusetts.....	472	9	211	128	97	10	18	1
Michigan.....	750	184	325	81	67	8	75	6
Minnesota.....	546	220	252	25	7	12	29	1
Mississippi.....	263	65	137	51	8			
Missouri.....	406	88	203	37	16	4	53	5
Montana.....	164	34	90	38	1			1
Nebraska.....	333	133	151	14	13	20		2
Nevada.....	37	6	17	13				
New Hampshire.....	83	6	53	15				
New Jersey.....	546	36	286	136	61	20	7	
New Mexico.....	109	10	74	18	6			
New York.....	1,313	184	581	219	126	44	153	6
North Carolina.....	470	78	254	93	43	2		
North Dakota.....	187	103	69	14				
Ohio.....	962	159	447	147	33	83	87	6
Oklahoma.....	349	58	217	46	11	15	1	1
Oregon.....	233	18	156	28	3	22	4	2
Pennsylvania.....	1,282	194	717	169	96	4	96	6
Rhode Island.....	98	3	30	35	11	15	4	
South Carolina.....	246	33	147	36	27		1	2
South Dakota.....	190	76	95	16	2			
Tennessee.....	290	42	154	54	18	16	5	1
Texas.....	906	123	531	127	62	20	38	5
Utah.....	125	17	69	21	16	2		
Vermont.....	88	19	58	10				1
Virginia.....	383	110	168	43	39	22	1	
Washington.....	379	69	176	66	36	5	26	1
West Virginia.....	228	62	104	40	20	1		1
Wisconsin.....	640	232	253	101	13	2	34	5
Wyoming.....	80	18	50	12				
Hawaii.....	6		2	3	1			
Alaska.....	5		1	1	1	1		
Canada.....	3			1	1			
No answer.....	490	86	201	70	41	10	53	29
Totals.....	19,113	3,557	9,539	2,972	1,392	490	1,057	106
Percent of total.....		18.6	49.9	15.5	7.2	2.5	5.5	0.6

8. Is new car bootlegging in your area seriously detrimental to your business?

	Totals
Yes.....	11,552
No.....	6,463
No answer.....	542
Other.....	556
Totals.....	19,113

7. If the population of your community is under 25,000, are you located within 25 miles of a metropolitan area?

Yes	No	No answer	Other
2,807	4,417	4,236	90
1,488	3,495	1,448	32
93	212	229	8
116	238	182	20
4,506	8,362	6,095	150

8. Is new car bootlegging (discount selling to nonfranchised dealers for resale) in your area seriously detrimental to your business?

State	Totals	Yes	No	No answer	Other
Alabama.....	254	207	37	4	6
Arizona.....	113	76	27	4	6
Arkansas.....	222	143	70	2	7
California.....	1,034	700	273	26	35
Colorado.....	283	225	49	6	3
Connecticut.....	222	161	50	9	2
Delaware.....	30	11	19	-----	-----
District of Columbia.....	38	13	20	2	3
Florida.....	296	237	46	7	6
Georgia.....	335	232	85	7	11
Idaho.....	145	97	41	5	2
Illinois.....	896	546	307	20	23
Indiana.....	620	420	168	20	12
Iowa.....	561	234	299	14	14
Kansas.....	527	346	151	16	14
Kentucky.....	300	196	92	8	4
Louisiana.....	214	164	40	5	5
Maine.....	158	72	80	3	3
Maryland.....	203	116	75	6	6
Massachusetts.....	472	290	154	10	18
Michigan.....	750	253	441	28	28
Minnesota.....	546	261	256	15	14
Mississippi.....	263	150	93	8	12
Missouri.....	406	254	122	10	20
Montana.....	164	61	84	11	8
Nebraska.....	333	173	142	8	10
Nevada.....	37	21	12	3	1
New Hampshire.....	83	48	27	4	4
New Jersey.....	546	413	114	6	13
New Mexico.....	109	94	9	3	3
New York.....	1,313	770	476	32	35
North Carolina.....	470	333	104	19	14
North Dakota.....	187	49	120	10	8
Ohio.....	962	468	417	35	42
Oklahoma.....	349	260	77	9	2
Oregon.....	233	140	79	7	7
Pennsylvania.....	1,282	805	403	31	43
Rhode Island.....	98	78	16	2	2
South Carolina.....	246	198	40	4	4
South Dakota.....	190	83	95	8	4
Tennessee.....	290	200	75	5	10
Texas.....	906	665	201	19	20
Utah.....	125	102	13	5	5
Vermont.....	88	44	41	1	2
Virginia.....	383	176	187	7	13
Washington.....	379	238	115	14	12
West Virginia.....	228	126	92	3	7
Wisconsin.....	640	241	363	15	21
Wyoming.....	80	55	21	3	1
Hawaii.....	6	6	-----	-----	-----
Alaska.....	5	2	3	-----	-----
Canada.....	3	1	2	-----	-----
No answers.....	490	297	140	43	10
Totals.....	19,113	11,552	6,483	542	556

9. Compared with last year has "bootlegging" in your area (a) increased? (b) decreased? (c) remained about the same?

State	Totals	Increased	Decreased	Remained about the same	No answer	Other
Alabama.....	254	125	18	108	1	2
Arizona.....	113	59	8	44	2	
Arkansas.....	222	67	39	114	1	1
California.....	1,034	329	247	422	21	5
Colorado.....	283	141	17	123	2	
Connecticut.....	222	100	25	89	4	4
Delaware.....	30	11	3	14	2	
District of Columbia.....	38	11	9	17	1	
Florida.....	296	182	15	95	1	3
Georgia.....	335	138	29	166	2	
Idaho.....	145	61	11	72	1	
Illinois.....	896	355	86	428	22	5
Indiana.....	620	336	37	232	10	5
Iowa.....	561	132	73	341	10	5
Kansas.....	527	203	43	268	12	2
Kentucky.....	300	114	30	148	5	3
Louisiana.....	214	88	24	99	3	
Maine.....	158	69	13	71	5	
Maryland.....	203	80	19	96	7	1
Massachusetts.....	472	219	34	199	14	6
Michigan.....	750	188	84	389	71	18
Minnesota.....	546	136	94	298	15	3
Mississippi.....	263	85	37	134	4	3
Missouri.....	406	112	57	227	6	4
Montana.....	164	47	19	89	5	4
Nebraska.....	333	108	46	169	5	5
Nevada.....	37	14	5	18		
New Hampshire.....	83	38	4	39	1	1
New Jersey.....	546	310	45	180	7	4
New Mexico.....	109	62	5	40	1	1
New York.....	1,313	539	144	579	39	12
North Carolina.....	470	178	61	224	6	1
North Dakota.....	187	27	29	115	10	6
Ohio.....	962	320	114	487	28	13
Oklahoma.....	349	147	38	161	3	
Oregon.....	233	82	30	112	7	2
Pennsylvania.....	1,282	540	118	592	26	6
Rhode Island.....	98	61	1	33	2	1
South Carolina.....	246	116	17	110	1	2
South Dakota.....	190	51	26	103	9	1
Tennessee.....	290	122	30	135	1	2
Texas.....	906	360	102	429	11	4
Utah.....	125	73	10	41	1	
Vermont.....	88	29	8	50	1	
Virginia.....	383	121	36	205	14	7
Washington.....	379	115	69	184	6	6
West Virginia.....	228	85	20	114	7	2
Wisconsin.....	640	157	75	374	27	7
Wyoming.....	80	38	7	34		1
Hawaii.....	6	6				
Alaska.....	5	1		4		
Canada.....	3	1		2		
No answer.....	490	179	65	200	41	5
Totals.....	19,113	7,268	2,175	9,017	481	172

12. Are you in favor of legislation allowing manufacturers to cancel franchises of dealers who sell cars to unauthorized persons for resale?

State	Totals	Yes	No	No answer	Other
Alabama.....	254	212	20	12	10
Arizona.....	113	82	22	5	4
Arkansas.....	222	146	55	12	9
California.....	1,031	839	130	28	37
Colorado.....	283	229	36	8	10
Connecticut.....	222	179	38	2	3
Delaware.....	30	21	7	1	1
District of Columbia.....	38	25	11	2	
Florida.....	296	227	45	12	12
Georgia.....	335	251	70	9	5
Idaho.....	145	117	23	2	3
Illinois.....	896	673	155	37	31
Indiana.....	620	448	109	32	31
Iowa.....	561	395	124	27	15
Kansas.....	527	393	85	36	13
Kentucky.....	300	214	67	12	7
Louisiana.....	214	157	37	12	8
Maine.....	158	115	32	10	1
Maryland.....	203	155	36	11	1
Massachusetts.....	472	377	65	18	12
Michigan.....	750	477	188	49	36
Minnesota.....	546	372	106	46	22
Mississippi.....	263	174	64	13	12
Missouri.....	406	293	81	15	17
Montana.....	164	120	30	11	3
Nebraska.....	333	199	102	19	12
Nevada.....	37	29	8		
New Hampshire.....	83	63	12	4	4
New Jersey.....	546	443	64	18	21
New Mexico.....	109	87	12	5	5
New York.....	1,313	998	224	59	32
North Carolina.....	470	362	65	23	20
North Dakota.....	187	142	29	10	6
Ohio.....	962	712	169	48	33
Oklahoma.....	349	275	53	17	4
Oregon.....	233	183	40	6	4
Pennsylvania.....	1,282	984	216	41	41
Rhode Island.....	98	86	8	2	2
South Carolina.....	246	196	34	10	6
South Dakota.....	190	123	48	11	8
Tennessee.....	290	206	54	19	11
Texas.....	906	644	190	37	35
Utah.....	125	109	11	2	3
Vermont.....	88	58	22	2	6
Virginia.....	383	267	83	21	12
Washington.....	379	284	67	11	17
West Virginia.....	228	183	29	10	6
Wisconsin.....	640	446	149	29	16
Wyoming.....	80	62	11	4	3
Hawaii.....	6	5		1	
Alaska.....	5	3	2		
Canada.....	3	2		1	
No answer.....	490	343	73	64	10
Totals.....	19,113	14,185	3,411	896	621

13. Do you feel that such legislation would effectively curtail "bootlegging"?

State	Totals	Yes	No	No answer	Other
Alabama.....	254	174	40	21	19
Arizona.....	113	68	29	7	9
Arkansas.....	222	131	64	16	11
California.....	1,034	674	200	73	87
Colorado.....	283	182	53	26	22
Connecticut.....	222	151	44	16	11
Delaware.....	30	16	10	3	1
District of Columbia.....	38	17	14	1	6
Florida.....	296	184	57	31	24
Georgia.....	335	201	89	17	28
Idaho.....	145	88	36	12	9
Illinois.....	896	539	231	70	56
Indiana.....	620	365	149	55	51
Iowa.....	561	303	171	56	31
Kansas.....	527	301	135	62	22
Kentucky.....	300	188	83	17	19
Louisiana.....	214	127	57	14	16
Maine.....	158	81	46	16	15
Maryland.....	203	133	48	14	8
Massachusetts.....	472	295	98	45	34
Michigan.....	750	382	255	79	34
Minnesota.....	546	283	158	82	23
Mississippi.....	263	148	73	27	15
Missouri.....	406	226	117	36	27
Montana.....	164	97	34	27	6
Nebraska.....	333	152	125	33	23
Nevada.....	37	23	9	1	4
New Hampshire.....	83	55	16	5	7
New Jersey.....	546	305	108	35	38
New Mexico.....	109	73	19	10	7
New York.....	1,313	796	338	100	79
North Carolina.....	470	320	80	40	30
North Dakota.....	187	112	41	25	9
Ohio.....	962	571	241	81	69
Oklahoma.....	349	221	72	35	20
Oregon.....	233	145	53	18	17
Pennsylvania.....	1,282	802	306	88	86
Rhode Island.....	98	73	11	9	5
South Carolina.....	246	164	44	16	22
South Dakota.....	190	101	56	19	14
Tennessee.....	290	185	70	24	11
Texas.....	906	504	256	64	82
Utah.....	125	84	19	7	16
Vermont.....	88	43	29	11	5
Virginia.....	383	237	95	28	23
Washington.....	379	223	90	35	31
West Virginia.....	228	153	40	17	18
Wisconsin.....	640	346	203	57	34
Wyoming.....	80	46	17	12	5
Hawaii.....	6	4	2	2
Alaska.....	5	3
Canada.....	3	3
No answer.....	490	294	96	84	16
Totals.....	19,113	11,453	4,727	1,680	1,253

17. Are you in favor of elimination of "phantom freight"?

State	Totals	Yes	No	No answer	Other
Alabama.....	254	210	7	36	1
Arizona.....	113	92	6	15	-----
Arkansas.....	222	189	9	24	-----
California.....	1,034	887	41	92	14
Colorado.....	283	211	28	40	4
Connecticut.....	222	165	16	36	5
Delaware.....	30	24	1	5	-----
District of Columbia.....	38	28	2	7	1
Florida.....	296	243	8	40	5
Georgia.....	335	289	11	35	-----
Idaho.....	145	119	12	13	1
Illinois.....	896	677	56	152	11
Indiana.....	620	457	25	133	5
Iowa.....	561	457	23	76	5
Kansas.....	527	417	23	84	3
Kentucky.....	300	230	12	57	1
Louisiana.....	214	190	6	17	1
Maine.....	158	115	13	30	-----
Maryland.....	203	159	12	31	1
Massachusetts.....	472	364	18	86	4
Michigan.....	750	533	63	148	6
Minnesota.....	546	420	28	94	4
Mississippi.....	263	215	11	35	2
Missouri.....	406	317	18	67	4
Montana.....	164	115	19	26	4
Nebraska.....	333	258	20	52	3
Nevada.....	37	30	5	1	1
New Hampshire.....	83	59	6	18	-----
New Jersey.....	546	406	40	88	12
New Mexico.....	109	90	5	14	-----
New York.....	1,313	1,008	54	245	6
North Carolina.....	470	335	31	97	7
North Dakota.....	187	141	9	35	2
Ohio.....	962	723	55	178	6
Oklahoma.....	348	296	6	37	9
Oregon.....	233	187	15	27	4
Pennsylvania.....	1,282	972	73	226	11
Rhode Island.....	98	75	5	18	-----
South Carolina.....	246	194	11	39	2
South Dakota.....	190	151	6	32	1
Tennessee.....	290	232	7	50	1
Texas.....	906	786	25	90	5
Utah.....	125	115	5	4	1
Vermont.....	88	68	6	14	-----
Virginia.....	383	280	31	69	3
Washington.....	379	295	21	60	3
West Virginia.....	228	172	11	43	2
Wisconsin.....	640	503	34	102	1
Wyoming.....	80	62	8	9	1
Hawaii.....	6	5	-----	1	-----
Alaska.....	5	4	-----	1	-----
Canada.....	3	2	-----	1	-----
No answer.....	490	318	27	144	1
Totals.....	19,113	14,891	984	3,074	164

19. Do you favor the return to such a system? (Territorial security)

State	Totals	Yes	No	No answer	Other
Alabama.....	254	144	78	24	8
Arizona.....	113	52	39	20	2
Arkansas.....	222	115	82	22	3
California.....	1,034	488	406	107	33
Colorado.....	283	139	107	28	9
Connecticut.....	222	126	73	17	6
Delaware.....	30	13	11	4	2
District of Columbia.....	38	14	20	3	1
Florida.....	296	163	94	30	9
Georgia.....	335	171	126	29	9
Idaho.....	145	68	53	19	5
Illinois.....	896	418	356	102	20
Indiana.....	620	275	267	64	14
Iowa.....	561	303	179	67	12
Kansas.....	527	248	195	72	12
Kentucky.....	300	141	132	24	3
Louisiana.....	214	105	83	18	8
Maine.....	158	72	67	15	4
Maryland.....	203	90	80	30	3
Massachusetts.....	472	224	198	39	11
Michigan.....	750	303	355	77	15
Minnesota.....	546	232	236	65	13
Mississippi.....	263	114	111	29	8
Missouri.....	406	195	142	54	15
Montana.....	164	70	59	34	1
Nebraska.....	333	145	136	42	10
Nevada.....	37	17	16	3	1
New Hampshire.....	83	43	31	9	-----
New Jersey.....	546	265	210	55	16
New Mexico.....	109	62	29	17	1
New York.....	1,313	560	578	146	29
North Carolina.....	470	260	160	38	12
North Dakota.....	187	81	66	35	5
Ohio.....	982	403	443	86	30
Oklahoma.....	349	195	119	25	9
Oregon.....	233	107	96	24	6
Pennsylvania.....	1,282	568	552	112	50
Rhode Island.....	98	41	44	13	-----
South Carolina.....	246	136	86	16	8
South Dakota.....	190	85	69	30	6
Tennessee.....	290	137	122	27	4
Texas.....	906	252	459	184	11
Utah.....	125	68	43	10	4
Vermont.....	88	42	37	6	3
Virginia.....	383	154	184	35	10
Washington.....	379	154	157	50	18
West Virginia.....	228	113	88	22	5
Wisconsin.....	640	259	294	71	16
Wyoming.....	80	43	24	10	3
Hawaii.....	6	4	1	1	-----
Alaska.....	5	3	2	-----	-----
Canada.....	3	2	-----	1	-----
No answer.....	490	210	171	104	5
Totals.....	19,113	8,693	7,766	2,165	489

19. Do you favor the return to such a system? (Territorial security)	Totals	18. Prior to 1950 did you operate under a contract which allowed manufacturers to impose penalties on sales outside your franchised territory? That is, did you operate under a territorial security clause?			
		Yes	No	No answer	Other
Yes.....	8,693	6,279	1,794	477	143
No.....	7,766	3,708	3,474	463	121
No answer.....	2,165	390	985	750	40
Other.....	489	339	82	24	44
Totals.....	19,113	10,716	6,335	1,714	348

19. Do you favor the return to such a system? (Territorial security)		6. Is the population of your community—						
	Totals	Under 2,500	2,500 to 25,000	25,000 to 75,000	75,000 to 250,000	250,000 to 500,000	Over 500,000	No answer
Yes.....	8,693	1,057	4,080	1,841	908	274	513	20
No.....	7,766	1,955	4,172	777	301	143	390	28
No answer.....	2,165	474	1,037	275	133	57	21	56
Other.....	489	71	250	79	50	16	133	2
Totals.....	19,113	3,557	9,539	2,972	1,392	490	1,057	106

19. Do you favor the return to such a system? (Territorial security)		7. If the population of your community is under 25,000 are you located within 25 miles of a metropolitan area?			
	Totals	Yes	No	No Answer	Other
Yes.....	8,693	1,529	3,622	3,479	63
No.....	7,766	2,371	3,573	1,758	64
No answer.....	2,165	478	970	703	14
Other.....	489	128	197	155	9
Totals.....	19,113	4,506	8,362	6,095	150

APPENDIX

The following constitutes a sample of dealers' replies to question 20, which reads: "Have you any further comments regarding conditions in the automotive industry today?"

Texas

Buick.—My only suggestion would be to eliminate the "yearly franchise" practice now in effect.

Georgia

Buick.—(1) Install territorial security clause, (2) manufacturer should pay dealer for AFA.

Work the same as he charges his customers. They would naturally say "No." A franchised dealer is not given as near as much consideration as one of their employees. They have given him guaranteed working pay, whether he works or not. What do they tell a dealer. Just read one of their contracts. It is indirectly a must for you to operate like they want you to or be punished. The quicker the manufacturer realizes that the dealer is his customer instead of an employee, we will be better off. The only way that both can make a continued success is by cooperation.

Missouri

Chevrolet.—Factories subordinate all other considerations to great god volume and childish mania for leadership at any cost

Washington

Dodge-Plymouth.—Another 2 years of continued factory overproduction will break 50 percent of the present dealers.

Indiana

Ford.—There is nothing wrong with the automobile business today. In fact I can't think of a better business to be in.

California

Ford.—The things the factory and its representatives have done would make your hair stand on end. A dealer has no security. If he fights the factory, he is canceled at once. They get away with murder.

Oklahoma

Ford.—Mike, if you will check what the boys pay for cars at Dallas, and then get the price at Tulsa or Oklahoma City, then add convoy charge to Tulsa or Oklahoma City from Dallas paid by company which adds to their cost, you will find the reason for so many cars at Dallas.

California

Cadillac.—I feel generally that the factories, through means they now have, can clear up bootlegging if they want to. Phantom freight would play a big part if it was completely equalized.

Washington

Nash.—For some years the Federal Government subsidized overproduction of farm produce. Now the dealers are forced to subsidize overproduction in the automobile field. * * * Cut back production to sensible proportions. * * * "They are as sick that surfeit with too much as they that starve with nothing."

Washington

Lincoln-Mercury.—The dealer organization is being enlarged to a point that few will be strong enough to stand slow times—50 percent of dealers will be lost with any kind of a decline in business.

Nebraska

Studebaker.—The margin of profit is very small today due to so much overallowance on trading. The country is glutted with used cars.

North Carolina

Chevrolet.—Present merchandising methods most deplorable in the 25 years I have been in business.

Colorado

Chrysler-Plymouth.—It looks as if two big companies want to put everybody out of business.

Florida

Chrysler-Plymouth.—We strongly favor legislation on contract canceling franchises of dealers who sell new cars to unauthorized persons for resale. Also * * * a return to the territorial security clause would eliminate much of the present disgraceful tactics of merchandising automobiles. Unless (there is) * * * decided improvement, * * * we certainly are closing our doors. Legislation is desperately needed to get the * * * industry back on the sound business footing it should have.

Colorado

Chevrolet.—* * * nationwide freight equalization plus territory security would be great step toward stabilization of this industry.

Arizona

Oldsmobile.—Why should the factory sell to States and counties for less than they will to a franchised dealer?

Texas

Ford.—Dealers should not be compelled to buy excessive advertising and be forced to take part in contests that they have no voice in the rules for winning, and should not have to buy from one to three hundred dollars worth of special tools every time a new model comes out, 50 percent or more of which are never used. We are told that this purchase is a must and we always have to buy.

Ohio

Chevrolet.—Dealer franchise should be changed to the extent that the dealer can least operate his business according to his best judgment without pressure from the factory to make sales that are not profitable just in order to maintain price or weight class position for them.

Michigan

Chevrolet.—* * * a lot of the difficulty * * * is due to fierce competition. While this competition might destroy a lot of the good automobile dealers and be in a long run detrimental to the business as a whole, I do not see how the Government could legislate controls that would help to any extent.

Georgia

Chevrolet.—The voracious manufacturers are promoting the ruin of dealers (small) and the public best interest in the race to stay in first place or get in first place.

Ohio

Studebaker.—Overproduction * * * Who is making money? The manufacturer.

Pennsylvania

Oldsmobile.—Would hate to see the return of regulations to the automobile business—but with the "blitz" advertising * * * it may be a good idea * * * to curtail long credit terms. * * * Sell the product you represent rather than terms. * * *

North Carolina

Chevrolet.—* * * All dealers should have a better guaranty with the manufacturer for the dealers' investment. At present a dealer has a 1-year franchise. Something should be done for the dealer's future.

West Virginia

Dodge-Plymouth.—I would like to see a dealer have to pay at least \$100 for selling in another dealer's territory. * * *

South Dakota

Cadillac.—The factory is too profit-conscious at the sacrifice of the dealer.

Massachusetts

Dodge-Plymouth.—Stop overproduction.

New Jersey

Dodge-Plymouth.—Need credit restriction.

Texas

Chevrolet.—Large eastern cities ship new cars into local areas at cheap prices. The cars are sold to nonfranchised dealers. They are able to do this because of the freight rates.

Texas

Chevrolet.—I have been in the wholesale and retail of the new-car business for the same car line for 30 years, a franchised dealer for the past 8, and this is the way I see to correct this entire mess and let franchised dealers make a fair return on their investment:

1. Control factory overproduction, due to greed for leadership and forcing the dealers to cast away all ethics of salesmanship and enter into eye-gouging tactics to deliver new cars which has created a ridiculous low gross for the dealer in comparison to the factories.

2. Fair distribution of new units to all franchised dealers.

3. Equalization of freight—Why not? You have no complaints on dealers bootlegging parts. They are delivered from the factory's depots to dealers in New York for the same price they are sold to dealers here in Texas. This one item alone, it is believed, would go a long way toward eliminating selling cars to nonfranchised dealers.

North Carolina

Ford.—Both financing and selling is too wild. One day this will all burst like a bubble and then what?

Texas

Lincoln-Mercury.—Need franchise agreement that protects dealer investment and security.

Texas

Chevrolet.—Sure hope you do something about this bootlegging. Thanks a million.

Idaho

Ford.—We want uniform freight. So much freight at Detroit and same freight all over USA. This will stop the flow of new and used cars from East to West.

Texas

Dodge-Plymouth.—(1) There is too much pressure by factory to sell cars or clean up models without the proper discount. Dealer takes the loss without the proper help from factory. (2) Arbitrary shipments of equipment such as power steering, power brakes, and power motor equipment are placed on cars ordered without this equipment and are paid for before the dealer knows about such equipment being placed thereon.

This business is long overdue. The contract is one-sided and should be equalized. We have some recent evidence of the arbitrary shipments mentioned above. It should not be allowed.

Washington

Chevrolet.—Urges a more equitable basis of car distribution.

Ohio

Pontiac.—The main cause for the trouble we all are having is overproduction, causing too much wild trading.

Louisiana

Chevrolet.—There is a basic conflict at present between the long-range objectives of franchised dealers on the one hand and factory short-term expediency on the other. Factories want terrific volume at full factory markup now while economy and market will stand the pressure. * * * Bootlegging furnishes factories additional "hot-shot" quick volume without marketing costs or supervisory expense,

while old line, high overhead franchised dealers are standing by protecting product reputation, and taking care of service headaches for factories on products sold through "stimulator" outlets, while themselves being forced through contract to maintain high capital and building standards. Don't believe factories would enforce territory security or any other type bootleg clauses unless pressured into doing so.

California

Chrysler-Plymouth.—Something should be done toward stopping manufacturers from forcing dealers into buying more cars than they can sell at a profit.

Michigan

Packard.—Factories must stop overproduction before the auto dealers all go broke or sell out as the case may be. This cannot go on.

Indiana

Chrysler-Plymouth.—The local dealer should be included in discussions concerning the number of new cars that are to be sold in each community—particularly Ford and General Motors dealers.

Illinois

Dodge-Plymouth.—Thirty months' maximum terms on new car. Result: Bring back the value of late model used cars by pricing people that should be buying used cars out of the new car market * * * this in turn should curb overproduction.

Utah

Ford.—With the factories netting up to \$16 per \$100 of sales as compared with the 1954 average among dealers of \$1.80 which includes their parts and service, there is too much evidence of "sell regardless" on the part of the factories. I cannot feel sure legislation will correct this.

Colorado

Lincoln-Mercury.—Unless something is done the franchised dealer will discontinue operation for curbstone operation; eliminate service departments and hinder the maintenance system that keeps cars on the road.

Maryland

DeSoto-Plymouth.—What's good for the factories is not necessarily good for the dealers and as long as every manufacturer wants to be No. 1 there is no solution. * * * The dealers themselves are not blameless. Their selling and advertising policies are ridiculous and do not merit the patronage of the average intelligent consumer.

Colorado

Lincoln-Mercury.—Return on sales alarming toward future existence.

Illinois

Ford.—Need to have price stabilization at once. Stop high overallowance and inflated finance charges and increase monthly payment used by many at present. Set new-car finance charge and stop kidding the public.

Arizona

Dodge-Plymouth.—The fight for first place in sales by the leading manufacturers in Detroit casts the burden and resultant losses on the dealers.

Georgia

Ford.—One franchise dealer should not be permitted to invade another dealer's territory when he is overloaded with cars, or place new or used cars through local parties in some other dealer's territory.

Idaho

Chevrolet.—With the large investments dealers have to have to meet factory standards they should have longer than a 1-year franchise. If it should be canceled, it would mean financial ruin for the dealer. The factories use this stick over the dealers to make them do as they wish.

Pennsylvania

Chrysler-Plymouth.—Worse than through so-called depression years. * * * Dealers are shipped models that are not salable in this area and either sell to bootleggers or sell with no allowance to cover overhead. * * *

Colorado

Nash.—I feel that all dealers are under too much pressure and controlled by factory influence. * * * I really believe that factory-dealer relationships should be the main thing to investigate and that would do much to stop what you term "bootlegging."

New York

Studebaker.—As a Studebaker dealer I am not bothered by overproduction by Studebaker but overproduction by GM and Ford does hurt us and their dealers. * * *

Colorado

Ford.—We are almost in the condition of 1933 when the only thing that could help us is a return of NRA or similar regulation. Overproduction and foolish desire for leadership on the part of the factories is responsible. * * * The large corporations by the very nature of their operations are forcing the smaller dealer into bankruptcy.

Alabama

Pontiac.—Consider life of smalltown dealer nearing end. Unable to meet metropolitan competition. Factories are concentrating on volume sale only. Public will suffer if local dealers are forced out of market.

Indiana

Nash.—We feel problems involved are more than bootlegging alone. Overproduction has put the car dealer in a position which has caused a wave of unethical practices—anything to get his cars sold. A normal supply of automobiles would put him in a position where he could do business in a normal manner.

New York

Ford.—Bootlegging has not seriously affected us yet, but it is causing great sale resistance because of the metropolitan papers which show big discount ads.

I believe every dealer should have a territorial security clause with a stiff penalty for infringement. I believe regulation W should be enacted again with a 24-month limit. This would stop crazy advertising. This would put people in good late-model used cars which they can afford to pay for instead of new ones which eventually will be repossessed.

Indiana

Chevrolet.—A used-car dealer can undersell me as he does not have the overhead that I do.

Illinois

DeSoto-Plymouth.—The dealer is in a financial squeeze between the factory and the public. His margin is not protected and he does not get a proper return on his investment. * * * He is overburdened with too much of his effort going in taxes—both direct and indirect.

Texas

Chevrolet.—I think there are too many direct and indirect taxes placed on automobiles. The manufacture or Federal tax (sic) should be reduced, at least, if not eliminated.

Ohio

Chevrolet.—The automobile business as a whole is a good business and I have been in it all my life. I believe if there was less factory pressure and more dealers were forced to stay in line with good business practices, this so-called bootlegging would vanish overnight.

My investment is \$146,000 and so far this year I have made about 1½ percent return on my investment.

Michigan

Lincoln-Mercury.—It is still a good business for the dealer that is a good businessman. I don't think competition is much tougher than it is in any other field of merchandising today.

Kentucky

Dodge-Plymouth.—I believe if territory security is returned with enough penalty for infringement of same, bootlegging will be stopped. It is the easiest way of policing bootlegging, stopping the sale of cars at the dealer source.

North Carolina

Chevrolet.—The trouble with the automobile business today is a "rat race" between Chevrolet and Ford for the No. 1 place in registrations. They are creating a so-called false market by dumping the automobiles on dealers. * * *

What we need is Government regulations on down payments and terms. This would force the manufacturers to curtail production and give the dealer an opportunity to sell his merchandise at a reasonable profit. If something along this line is not done pretty soon, the manufacturers will break more than half of their dealers in their mad scramble for the No. 1 place. * * *

Louisiana

Chrysler-Plymouth.—During 1954 we sold 6 million cars in a 5-million car market. In 1955—8 million in a 6-million market. We are now selling our 1957 prospects and a lot of dealers are getting hurt in the process, of overallowances on used cars and long-term financing to be able to move these cars.

Massachusetts

Chevrolet.—I believe that overproduction has caused 99 percent of the adverse conditions experienced at present.

Pennsylvania

Pontiac.—Factory pressure is the greatest cause for the ills of the automobile business today.

Washington, D. C.

Buick.—Business is good. I am making money. Thanks.

Pennsylvania

Chevrolet.—Availability of adequate parts and service by franchised dealers require protection from sale of cars by unauthorized outlets. Buying public in jeopardy when buying car from unethical and irresponsible outlets. Wartime operation of dealers indicate need of protecting franchised dealer outlets for any future emergency.

North Carolina

DeSoto-Plymouth.—In our location the main trouble seems to be the race between Ford and Chevrolet for first place. These dealers are being loaded with too many cars for this territory, and I cannot see how they operate at a profit. The use of long-term credit to move the overproduction of cars seems to me a big danger. A person can buy a new car with less money than it takes for him to buy a used car. I consider the overproduction of cars the No. 1 evil in the industry today.

Tennessee

Lincoln-Mercury.—Freight rates are not our major problem. Actually, there was not but 1 month of the 1955 model year that we received enough cars. However, during this same period other make dealers were receiving great quantities—especially GM dealers. The volume of sales was great enough to break price structure. Without price structure this business will never be substantial. Too much production such as the industry produced, as a whole, in 1955, is the greatest evil we contend with.

Michigan

Packard-Studebaker.—I think that the overproduction of General Motors and Ford are causing the main trouble. When anyone can buy their product for \$100 over invoice it is time that something is done about it.

Michigan

Foreign make.—If factory coercion of dealers is not currently subject to regulation, we need a law.

Pennsylvania

De Soto-Plymouth.—Forcing cars on dealers who are too timid to say no is the biggest cause in my belief of bootleg sales because too many dealers can not afford to hold them and this is the easy way out.

Nebraska

Ford.—Overproduction and factory pressure are chief causes of our trouble.

Nebraska

Chrysler-Plymouth.—I will be broke in about 6 months.

Kansas

Ford.—At this time Government legislation, we feel, is not needed. Dealers must learn to solve their own problems with the factory to keep our portion the economy free and independent.

Missouri

Nash.—Too liberal credit terms (small or no downpayment and long duration of payments) is a serious threat to our economy—could lead to another disastrous decline from a negligible downward trend.

Missouri

Kaiser-Willys.—* * * No dealer should be forced to purchase units, such as trucks or certain types of cars, just because some factory projected wrong, in order to secure the units that will sell in his area. * * * Crazy, unethical finance terms and advertising * * * should be banned.

New Jersey

Chevrolet.—Auto dealers should have permanent contract. Factories should not be able to cancel contract unless grievous offense. Factories should have to renew contract. * * *

West Virginia

Packard.—The opportunity the factory reserves to cancel contracts in 30 days without reason. (This) should be changed to protect all—especially dealer and buying public.

Rhode Island

Chevrolet.—Would like to see strong control by Government or State over all automobile dealers to eliminate bootlegging and other unethical practices. * * *

Pennsylvania

Pontiac.—* * * Change the selling agreement between the factory and the dealer. * * * Make it impossible in some way that the factory cannot cancel out or refuse to renew the selling agreement for no other reason than that the dealer is not selling enough new cars to satisfy the factory. * * *

Tennessee

Oldsmobile.—Should have protection with regard to cancellation of contracts by manufacturer. * * * The manufacturer holds both ends of the string * * *.

Colorado

Ford.—* * * The shortsighted expedient used by manufacturers for temporary volume by setting up dealers known as sales stimulators in metropolitan markets * * * (who offer) cut-rate prices and razzle-dazzle seducements * * * serve the factories by making false claims of additional production being needed that soon gluts the market. * * *

Illinois

Chevrolet.—Eliminate the new-car registrations which are used as the barometer of percent of sales that the manufacturer uses as the hammer over their dealers to produce more sales. When a dealer has to take unprofitable deals to get his share of the new-car registrations, he has to sacrifice profit. We know of no other business which uses registrations as a method of putting pressure on the franchised dealers of the product to take more merchandise than they can sell at a profit.

Missouri

Studebaker.—Overproduction is the curse of today's automobile business. Dealers are expected to keep selling regardless of profit and yet the independent dealer, a small-business man, is completely overlooked by both management and labor in its recent GAW negotiation. The dealer is in due need of a "guaranteed annual margin."

Illinois

Pontiac.—Small dealers should have protection against factory pressure.

Indiana

Chrysler-Plymouth.—Bootlegging, as I see it, has been brought about solely from the manufacturer. These manufacturers are aware of the conditions and care little about doing much for the dealer being affected.

Kentucky

Buick.—Production is too high for a stable future.

Kentucky

Cadillac.—(1) Overproduction; (2) too liberal credit terms.

Illinois

Lincoln-Mercury.—The automobile business is important to the whole country and if it requires laws to keep it in line then lets have them.

Massachusetts

Nash.—No packs, no gimmicks, no come-on advertising.

Nebraska

Willys.—Factories can or could correct any and all problems in automobile retailing if they cared to—through contracts and a reasonable and honest supervision of their dealers.

Illinois

Pontiac.—Don't feed inflation—restrict credit terms to 21 months on new—15 months on used.

Illinois

Chrysler-Plymouth.—Seems as though the auto dealers should organize on the same basis as labor—and strike at the slightest bit of difference.

Texas

Dodge-Plymouth.—Curtail production to actual need. Lower cost. **Factories** are getting full retail prices to dealers. Too many high-salaried executives from \$75,000 to \$1 million per year.

Missouri

Chrysler-Plymouth.—For every car bootlegged, a customer for a profitable deal is off the list of prospective buyers.

Kansas

Lincoln-Mercury.—I believe some of the larger dealers and factories should be investigated for auto trust relationship * * *.

Kansas

International.—Some method to stop discount selling would help larger dealers with large overheads to stay in business and pay their taxes.

North Carolina

Chrysler-Plymouth.—Legislation is urgently needed.

Louisiana

De Soto-Plymouth.—Yes. I think the only solution is left to our Federal Government officials to make certain laws to protect the greatest small business in America. I for one am seriously thinking of giving up this automobile business. We cannot compete with used car lots selling new cars because we have to uphold the car manufacturer's good name by servicing their makes of cars, which the customer is entitled to regardless where he buys the car.

P. S.: You can use my comments or my name for any just purpose whatsoever. It is no secret I am personally fed up with this car situation. Thanks very much for the questionnaire.

Texas

Chevrolet.—The auto business will be insecure so long as factory only gives a 1-year contract. It takes \$50,000 to handle a small deal and it isn't feasible to make that kind of investment and only have a 1-year contract.

Michigan

Packard.—Some form of concrete advisement to small ambitious person or persons who wish to set the world on fire with an investment of from \$20,000 to \$30,000—to stay out. This of course would necessarily involve probably 85

percent of the smaller manufacturers' dealers—such as Studebaker, Packard, American Motors—with dire results to both small companies which again plays into the hands of the Goliaths * * *.

California

Ford.—I think it is time our Government takes a hand in the personal feud between Mr. Breech of the Ford Motor Co. and Mr. Curtice of General Motors, Their determination to outdo each other in production is ruining an industry and small business which is so important to our national economy. This overproduction makes it practically impossible for individual dealers to operate at a fair profit and to stay in business. This forcing of cars down the dealers throats must be stopped if this industry is to survive.

Alabama

Buick.—There needs to be a Federal law prohibiting dealers from false advertising * * *.

Massachusetts

DeSoto-Plymouth.—Unless something is done to make it possible for a new-car dealer to realize a fair profit there'll be a collapse of automobile dealers, and eventually a monopoly by the factories to do their own retailing.

New York

Buick.—Dealer lack of security due to yearly contract with factory makes the dealer wholly dependent on factory policy and whims.

New Jersey

Ford.—Competition is very rough. Percent of profits is almost nil. But under a free-enterprise system—which I fully believe in—there isn't much that can be done about it.

Dealers must operate their businesses better to survive. Factories must co-operate more for the dealers' welfare and be allowed under the law to do so.

Oregon

Chevrolet.—Would like to see return of penalty clause in franchise, by which a dealer who sold to any automotive sales outlet, other than an approved subdealer, a unit which he knew was being purchased for resale must pay to the dealer in whose zone of influence the car was sold the difference between cost and recommended list price.

Idaho

Dodge-Plymouth.—* * * manufacturers that award bonuses to their dealers for great numbers of new-car deliveries (with those cars being sold to questionable credit risks and at terrific discounts) force competition to a point where a great many dealers cannot compete. The average profit per new car is dropping to such a point that it is a question of whether it is worthwhile to stay in business and compete.

Georgia

Studebaker.—The main cause for conditions existing in the automotive industry today is overproduction by General Motors and Ford—forcing sales for registrations.

The connection between General Motors dealers and GMAC and MIC allows financing on low downpayments and long terms that Chrysler and independents cannot get, which is strictly in violation of antitrust law, but it seems that General Motors can get by with anything. If the monopoly cannot be broken up, give us regulation W, so that every manufacturer and dealer will be on the same basis.

The franchised dealer is required to have a building, a parts inventory and other facilities necessary for the servicing of his factory's new cars, employ trained personnel, and meet other requirements that necessitate a heavy overhead, while the used-car dealer can operate from just a lot with a very small percentage of the number of employees.

Unless the present situation is changed the franchised dealer would be foolish to continue in business, and you can well see what that will do to the economy of the country.

Colorado

Dodge-Plymouth.—There should be some legislation to protect the dealer from undue pressure from the factories. In my opinion, a dealer should have the

right to decide how many cars he can sell in his market at a profit and order accordingly without being threatened with the cancellation of his franchise.

Ohio

Ford.—So far this year, Ford Motor Co. has enfranchised an additional 7 new dealers within a 15-mile radius of us. These dealers do not have proper facilities to service the cars they sell; neither do they have capital to stock sufficient parts. They cut prices more than established dealers have been doing and try to hire away personnel who have been trained at the established dealers' expense.

Utah

Ford.—Freight differentials and unethical franchised dealers along with pressure to take more cars than needed has, along with overproduction, caused much of the bootlegging.

California

Pontiac.—Territorial security clauses are no cure for any of the ills of the industry. Large areas, such as the 40 or so Pontiac dealers in metropolitan Los Angeles, are able to maintain a paid employee to check up on territorial security violations and thus impose penalties on dealers outside their territories; whereas, small dealers are not able to maintain such a checking system and cannot spot such violations by the dealers in the metropolitan areas.

Colorado

Chevrolet.—My answer to 12 is "No" for I would rather have Congress give the automobile manufacturers permission—not a mandate—to reinstate what was known in our Chevrolet contract as territory security and the bootleg penalty * * * which caused the selling dealer to pay \$35 if paid voluntarily, or \$50 if he delayed paying over a certain time, to the dealer in whose territory the sale was made to a legitimate, retail customer, except fleet users. If the sale was made to, or found its way into, the stock of a competing franchised or used-car dealer, the penalty was \$200. This clause made bootlegging unprofitable for all but did not affect the public interest. This small fee paid a neighboring Chevrolet dealer did not deter dealers from selling in another dealer's territory and thus protected the public interest by permitting full competition. * * *

I believe in the franchise system for dealers but think it will be discontinued within 5 or 10 years if bootlegging is not stopped. This will greatly injure the public interest for the manufacturers will have to solicit and sell to all dealers. They will not be able to estimate and build as they do now. Therefore, their production will be unpredictable and undoubtedly lower, and the public will have to pay more for this limited production * * *. Factories are dependent on dealers as dealers are on them. If too many dealers become unprofitable, factories will change the situation before it hurts their interest. Please give them the right to protect our franchise and the public interest by amending the antitrust or applicable laws as follows:

"It shall not be unlawful for any manufacturer to place a money penalty clause in its contract with its franchised dealers as a penalty for selling their product in another similarly franchised dealer's city, town, or village, or territory outlined in said dealer's contract; or to an unfranchised dealer, or a franchised dealer of another make product, for resale."

* * * * *

I do not think phantom freight is a problem. I would like to have legislation that would permit a factory to deliver its products anywhere in the United States at the same price. I believe this definitely in the public interest for the public would then know what it should pay for an article. The way it is now * * * it's perfectly legal to set any price—higher or lower than a factory-suggested price (and will be after permissive legislation), but the factories could protect the public interest by advertising their suggested retail price.

I don't believe Congress could find many dealers actually canceled for not taking cars. Our factory certainly makes every effort to sell us a great number of cars, and sometimes more than we think we should take, but if I had only one customer in * * *. I think probably I would "turn on the heat" to try to sell said customer so I grant the factory the same privilege and must have the "guts" to say "No" when I think I have bought enough * * *.

California

De Soto-Plymouth.—Look into factory relations with large dealers who are able to buy in large volume

Mississippi

Ford.—Unethical (false advertising) prices, down payments, payments per month will eventually kill the small dealers. Finance charges are usually exorbitant with most unethical and unauthorized dealers.

Maine

Hudson.—Payment period should be limited to 24 months.

Arkansas

Ford.—Misleading advertising is very bad.

North Dakota

Dodge-Plymouth.—There is little question but what overproduction is the main cause of dealer distress. In order to move extra cars some dealers feed the bootleg market. Overproduction forces dealers to expand their retail market by granting unusual terms, overallowing on trade-ins and otherwise bringing into the new-car market many buyers who belong in the late-model used-car market.

Oregon

Chrysler.—I believe our dealer and factory franchise should be strengthened in the dealer's favor. Dealer actually makes factory profits possible by aggressive penetration of dealer's market. Present dealer-factory franchises offer dealer very little protection, yet factory requires heavy investment by dealer.

Michigan

Ford.—It's overproduction that causes all the evils.

California

Ford.—The only concern I have is the present trend of the Big Three to monopolize the retailing field for new cars by use of the motor-holding financing set-up for new dealers. This means that they control the policy of the dealership to fit their primary purpose of selling new cars in volume without regard to service or community good. In our area a majority of new-car sales are controlled by the manufacturers through his means. Old dealers are being forced out.

Nebraska

Chevrolet.—The major automobile manufacturers are apparently projecting their production figures on a scale for position instead of the consumer market. The fight for first place between General Motors and Ford has become so intense that they are overproducing automobiles at a fantastic rate without giving any consideration to the retail dealer's profits. Dealers are discounting away most of their legitimate profits so that they may be able to sell enough cars to meet the dealer sales quota set by the manufacturer. * * *

Utah

Cadillac.—I feel that most of our troubles are due to a combination of conditions—overproduction, weak and unethical dealers and factory pressure to move cars. I feel that a uniform price throughout the United States would eliminate the biggest shares of these problems.

Nevada

Packard.—A healthy condition in the automobile industry can be maintained only by factory control by Government. A quota 5 percent under present rates or just enough to take care of actual needs would eliminate mortality among dealers and take care of all customers. A closed dealership penalizes buyer, as a new dealer will not care to go so far in taking care of a customer as the dealer that sold car. These forced sales of overstock do not help the consumer, as these dealers put such a big pack on their prices, in order to give outlandish allowances, that the customer will take a 50-percent depreciation on his car the first year, thus creating a very unhealthy condition.

New York

Pontiac.—The factory should be compelled to pay the dealer within 30 days on his warranty work rather than make him wait 6 to 12 months sometimes for his money. If the dealer doesn't pay the factory promptly he loses his franchise. This is all one-sided and should be changed immediately.

Nevada

Chrysler.—Let's keep the Government out of the car business.

New York

Ford.—1. Bootlegging * * * Government regulation is not the answer. The solution lies in an enlightened buying public and also in stronger dealers.

2. Phantom freight rates. The auto manufacturers today are hard as nails in a very competitive business. We all must trust them to make decisions as to pricing, etc. They must make profits. They must be competitive. The pricing structure is sound. The basis has merit.

3. Territorial security. This is as old-fashioned as the model T. In the public interest let the customer shop the market. Only a weak dealer who wants a crutch looks for this "free ride."

* * * This year, the 40th year of our existence in the same location with the same product, marks the most successful year we have yet enjoyed. * * *

We believe the reasons are clear:

1. * * * We deal in a cooperative spirit with our factory, our customers and our employees.

2. We have geared ourselves to merchandise in volume. * * *

3. We have better products to sell because our manufacturer is not regulated with synthetic controls which limit his scope.

Texas

Chevrolet.—The prevalence of false and misleading advertising by auto dealers on both prices and terms is having a very demoralizing effect on the public and should be stopped by legislation of some type.

Pennsylvania

Chevrolet.—* * * In their desire for excessive profits factories have pressured dealers into an unsound competitive position, in order to secure volume. Factories actually encourage cross-selling. * * * Why should all the competition be at the dealer level? For over 15 years no major manufacturer has advertised a price reduction in spite of excessive earnings. Repercussion when it comes—and it will come—will be serious. * * *

Get some ethics back in the business, even if it takes Government regulations. Reinstate regulation W (at least for the auto industry) to prevent unsound selling.

Reinstate excess profits taxes.

Regulate that all manufacturers file price schedules, including dealer discounts, with the Department of Commerce, and that all bonuses, special discounts, etc., at cleanup time be listed and advertised as price reductions to consumers. This information should then be made available to any dealer upon request.

Government should work in closer harmony with NADA in the following out of essential recommendations.

Ohio

Buick.—Hard to make a fair profit under today's market unless you operate at high volume.

Pennsylvania

Packard.—Car dealers are forced to take more cars than they can sell making a reasonable profit. So they pass them on to bootleg dealers at \$25 to \$50 over invoice. The bootleg dealers passes them on to a customer at another \$25 to \$50 over his price.

Pennsylvania

De Soto-Plymouth.—I would like to see a penalty of \$100 to \$150 on the dealers that sell to bootleggers, also on factory's full gross profit. I would like to see some law passed so we could run our garage like other business places, at a fair profit, as now the factory runs us.

Iowa

Dodge-Plymouth.—Factories insist on too much production. Some factories—Ford and GM—are too big, should be controlled and not allowed to use such forceful methods on dealers.

Cadillac.—We feel that if the automobile business continues * * * as it has been going in the last 2 years in reference to overproduction, low finance deals (36 months), padding of car prices, big overallowances, the business will go to the larger metropolitan areas and cars will be sold on a volume basis, pushing the smaller dealers in the smaller communities out of the business.

Massachusetts

Ford.—We honestly believe that the race for leadership and overproduction is bad for both the dealer and the buying public.

Texas

Buick.—Unethical franchised dealers, false advertising are definitely ruining the franchised dealers * * *. There is so much false advertising. This definitely should be stopped. Bootlegging by the larger dealers that is sanctioned by the factory representatives should be stopped, or the little dealer should not be criticized for doing this.

West Virginia

Chevrolet.—Territory security would eliminate the problems of the dealer.

Illinois

Dodge-Plymouth.—(1) Legislation should be considered to eliminate fraudulent or misleading advertising. (2) A board should be established similar to National Labor Boards to act as a mediator in all involuntary franchise cancellations.

California

Chevrolet.—Factories are pushing the dealers for volume. Result is very large discounts, wild terms and false advertising, with high interest rates. Regulation would help—one-third down and 24 months with fixed interest rates on new and used cars.

Iowa

Ford.—Franchised dealers are on their way to ruin because of (1) a race between two manufacturers; (2) bad distribution; (3) overproduction; (4) bad relations between factory and dealer; (5) 35 percent truck penetration for 1955, still trucks are a bad problem; (6) dealer loyalty cannot be had by force.

Michigan

Oldsmobile.—I believe that the automobile dealer has a perfect right to mark up freight and EOH which are cost items to the dealer and represent part of his fixed investment in an automobile. The factory discount and dealer's profit are allowed to be figured only on the retail list price and cost price and no allowance is made for the dealer's investment in the Federal excise tax and freight plus cooperative advertising which the dealer pays.

I believe that a dealer is entitled to mark these items up on the ratio so as to give him a 24-percent profit on the total selling price on an automobile. The same should be true on accessories.

California

Ford.—Reduced production, abolition of phony increase in prices for purpose of making larger allowance on used vehicles so as to establish down payment, fair trade code might solve the problem providing used unit allowance could be somewhat controlled.

Oregon

Pontiac.—Factory pressure is undoubtedly the big cause of overselling. Short downpayments and 30 to 36 months payments.

Minnesota

Chevrolet.—The public will not let a dealer make a fair profit on his product. Consequently, you have dealers that use unscrupulous tactics which in turn give all dealers a bad name. Something should be done about advertising of new cars.

Michigan

De Soto-Plymouth.—Enforce manufacturers to curtail production only to the extent that each dealer have only as many cars as he personally can handle profitably. Stop this forcing, by different ways, of dealers to handle cars they do not really want. Give them all they want and no more.

California

Oldsmobile.—Would like to see production slowed up a little.

Oklahoma

Buick.—Some companies are trying too hard for first place in sales, forcing dealers to sell too close. This affects all dealers.

California

Ford.—False advertising, misrepresentation of contract terms, price packing and, in general, poor credit practices—no down, 5 years to pay, etc.

Nevada

Kaiser-Willys.—Model changes should be made on January 1 each year and not at various times of the year. Associate dealers should be allowed to secure the cars they wish to stock from any direct dealer handling their make of car whom they wish to deal with. This will keep some unethical direct dealers in line with fair practice.

Wisconsin

Ford.—Most of the trouble is too high production along with high pressure put on dealers to sell regardless of profit.

California

Chevrolet.—If there were not an overproduction brought about by the bitter competition between manufacturers, to see who can outproduce whom, dealers would not be forced to resort to the unethical, ridiculous, and fantastic advertising that is sweeping the country and which has changed the retailing of automobiles from a dignified, respected, and legitimate business into a honky-tonk gyp type of operation, which from all indications has the blessing of the manufacturers.

California

Chevrolet.—(1) We need permanent dealer contracts, that cannot be canceled without just cause; (2) Distribution of cars on the basis of actual need, and not the factories' desire to register so many cars in a given area; (3) Elimination of phantom freight; (4) A Federal clamp-down on false and misleading advertising; (5) Return to a sane credit basis * * * If we are to have any Federal controls this is the place for them.

Iowa

Pontiac.—More rigid requirements to obtain franchises and less pressure from manufacturer. Allow manufacturer more power to call the price cutters on the carpet, or fair-trade agreement.

Iowa

Cadillac.—Packing of new car prices by dealers (some factories sanction this practice) has so befuddled the buyers and caused the "gimmick" deals to be so prevalent that it has done more to hurt the car business than any other thing * * *

Missouri

Buick.—Too much pressure by factory to buy tools and advertising in excess of our needs.

Missouri

Chevrolet.—My trouble with my factory is that I have no assurance of a contract from year to year regardless of how well I serve their interests in getting what they call market penetration. Their treatment (my factory) of their dealers can best be described as the treatment accorded a captive dealer.

Idaho

Packard.—Manufacturers should be allowed to sell only through franchised dealers. They should not be allowed to sell national, fleet, and governmental agencies direct, at special prices. Manufacturers should not be competition to their own dealers with special prices and discounts.

New Mexico

Chrysler-Plymouth.—Car manufacturers are building more cars than our economy can absorb and allow dealers to make a normal net return. It's a nice business for manufacturers. They force cars on dealers, receive cash on delivery, no trade-ins, and do not have to put up with complaining public—beautiful setup.

Oregon

Ford.—Fair-trade pricing would give a profitable margin and would make for a far more realistic transaction for all parties concerned.

Oregon

Chrysler-Plymouth.—We feel that if the factory were required to repurchase new, unsold models in a dealer's stock at 3 months' intervals this would take care of bootlegging and overstocking.

Oregon

Pontiac.—I think the manufacturers should protect their dealers in regard to fleet sales. These should be sold through bona fide dealers and not the manufacturer.

Oregon

Buick.—I do not feel that territory security is of any value because the penalties in many cases can be avoided and also because the penalties are not sufficient to deter another dealer from making the sale, nor is the area in which you have protection large enough.

New-car bootlegging comes mostly from large dealers who get all the cars they want and sell them fast with no service for a small profit. The factories can stop it if they want to, but they want sales * * *. It all simmers down to the fact that they are not seriously interested in stopping bootlegging.

California

Cadillac.—(1) We have over \$300,000 invested in our dealership, yet must operate on a 1-year contract.

(2) The public interest requires that they receive proper service on new cars sold. This must be provided for by the factory, by allowing the factory-authorized dealer where the purchaser lives an allowance to give the service, as called for in the warranty.

(3) Federal Reserve Board should control terms on installment sales.

(4) Income taxes on small corporations and businesses should be revised. Our little corporation pays the same rate as billion-dollar corporations.

Minnesota

Pontiac.—Leave auto business alone. As far as dealer problems are concerned, I am in favor of a bonus plan of \$100 per car, all of which should be paid dealer at the end of the year.

South Dakota

Chrysler-Plymouth.—Eliminating bootlegging must come through legislation.

As of this moment, the larger percentage of automobile manufacturers are not in the least concerned about retail price of their units sold. Their only concern is sales position and the percentage of consumer sales.

For this reason, many dealers are forced to take new cars, become overstocked and, because of financing problems, to dispose of their older new car stock through any channel they can.

Actually, through this practice, there is a waiting market for the "curbstone dealer."

California

Ford.—Some control of misleading and unethical advertising by city dealers by both factory and Government should be had.

Missouri

Studebaker.—We have had very little bootlegging trouble here. However, we live in a town that is 50 miles from a large city, and the metropolitan newspapers are widely distributed in our city. The unethical and untrue advertising that is spread in these papers does more to affect our business than bootlegging. Blitz sales, exorbitant offers for used cars, and other gimmicks all have a detrimental effect. Overproduction, and the manufacturers' desire to all be No. 1, is the big reason for the industry's headaches. We need more quality and less quantity, and more salesmen instead of circus performers.

California

Dodge-Plymouth.—* * * Enforce the manufacturer to make the current model delivery date from January 1 on, not 2 to 3 months before the year end.

Stop all false advertising.

New York

Buick.—Dealer should have a voice in what type of sales material he accepts from factory. The special-tool racket should be eliminated. Dealer should not have to pay the factory a big profit on literature, sales aids, new-car display material, etc.

Massachusetts

Packard.—Overproduction, I believe, is the primary cause. Improper financing is another evil—long terms, no downpayments. I believe in credit restrictions.

Michigan

DeSoto-Plymouth.—Just producing too many cars, and it's cheaper to finance a new car at 30 months than a used car at 15 months.

New York

Cadillac.—Factory top brass and down the line * * * get their bonuses, etc., at the cost of blood sweat out by dealers who try to protect their life's work and savings by hard work and worry. * * * Also, there seems to be strong political connection between factory brass hats and a few larger dealers. This should be investigated. For instance, the world's largest Chevrolet dealer, etc., etc. The wine and dine boys. Also would recommend that all dealerships be franchised on 3- to 5-year basis instead of the uncertainty relative to 1-year franchises.

Motor-holdings-backed dealers and similar factory-financed setups * * * create a monopoly over their competition. These factory-controlled (or financed) dealers are just another subterfuged outlet and, in my opinion, under factory pressure, to sell new cars at ridiculous prices, thereby forcing competing franchised dealers to slaughter prices, create come-on advertising and then apply high-pressure tactics; in other words, unfair competition and another method for the top-bracket boys to gather horribly high bonuses at the expense of the struggling dealer who has spent his life's work and effort building good will and a following.

South Carolina

Buick.—Most serious lack is a bankable or long-term franchise. Correction of this defect would attract and hold a much more stable dealer organization. Present distress merchandising is due largely to factory pressure, using cancellation as an ever present threat.

South Carolina

Dodge-Plymouth.—We need territory security and the privilege of moving our own cars by private convoy, not by common carrier.

Massachusetts

Nash.—Feel that manufacturers should not overproduce for first, second, or third place but should operate on a sound profitable basis, and guide their dealers so they in turn will operate profitably for the country's economy.

Oregon

Dodge-Plymouth.—(1) Need good, fair control on time payments * * * now that will stop low downpayments, and not over 30 months for new cars, with a graduated scale for older cars. Too many people buying new cars that should be buying used cars.

(2) Need a good, fair contract with automobile companies that protects a dealer with a longtime investment. Contracts today protect the dealer in no way, but factory is protected in every way.

Oklahoma

Chevrolet.—When a customer buys a bootleg car, he usually saves some on initial purchase price. When he brings that car to a franchised dealer, said dealer has no responsibility to that customer. Often the result is a customer dissatisfied with that specific make of car. Sales to nonfranchised dealers should be eliminated.

Oklahoma

Buick.—Frenzied competition between factories is resulting in more and more uncertainty of the future as far as dealers are concerned. * * * It took legislative action to * * * stabilize the oil business. I feel that if we were to have a slight recession in business automobile dealers would fold up by the thousands. (Understand there are only 40,000 dealers.) Uncontrolled production does not augur

well for value of owner's old car. I cannot offer any easy solution, but the matter is very, very serious.

Indiana

Cadillac.—Cadillac dealers have been less affected by unorthodox automobile retailing than any other group of dealers because of the strong demand for Cadillacs. However, it is apparent that we soon will be facing the same problems. We believe that the manufacturers really do not care much for the dealers' dilemma caused by overproduction. It will only end when a sufficient number of dealers quit or go under to make the factories wake up.

Texas

Oldsmobile.—I am not in favor of Government in business. I know our problems will work themselves out without calling for police. I remember OPS and regulation W, which was a shining example of "monkey wrenches in cogs of free enterprise."

Michigan

Ford.—Better dealer-factory relations.

Louisiana

Dodge-Plymouth.—We are in favor of a more equitable share of legitimate profit on our sales. To the best of our ability we can only find dealers making less than 2 percent on their volume sales, whereas Chrysler Corp. and General Motors are netting 20 percent or better. This is largely brought about by overproduction.

Illinois

Nash.—Enfranchised dealers are required to carry a considerable investment in parts and service equipment. The cost of free service on a new car from the time it arrives in the dealer's place of business until the warranty expires averages from \$50 to \$90 depending upon the make of car and dealer volume. Dealer is entitled to protection in his territory to take care of this overhead as well as this actual cost of free service.

Louisiana

Buick.—Overproduction and inequitable distribution seem to be the underlying causes of the sad plight of automobile dealers today. We scream for sufficient stock of cars, but cannot get what we need, because the manufacturer ships to hundreds of small dealers who, in turn, sell to used car dealers who compete with us.

Connecticut

Hudson.—Automobile dealers today are not allowed to run their own business. They are completely dominated by the factory, which requires that they have a certain kind of establishment and purchase a certain number of new automobiles each year, whether or not they can dispose of them at a legitimate profit * * * Dealers fear operating contrary to the orders from the factory for fear of losing their franchise and therefore are forced to dispose of the new cars forced upon them, sometimes below cost or at a very small profit.

Tennessee

Chevrolet.—The promiscuous use of unsound credit is undermining the future market and the unethical practices accompanying the trend undermine the good name of reputable lending agencies.

New York

Chevrolet.—We have a total investment in our dealership of over \$500,000. We have no protection whatever on our investment in trying to compete with new car sales by used car dealers who have no investment whatever other than a used car lot. This is probably the most serious condition we are all faced with today.

West Virginia

Chevrolet.—Conditions in the automotive industry today are healthy, but I am personally concerned about the trend by some franchised dealers toward wild and misleading advertising and other practices which cause public loss of confidence in dealers.

Montana

Chevrolet.—I think it's a bad mess.

Florida

Pontiac.—If dealers would learn the value of saying "No" both to the factory and to unreasonable customers, you would not have had to mail this questionnaire. (Votes against Congress investigation.)

Indiana

Ford.—I do not believe any automobile manufacturer should be permitted to have any money invested in an automobile dealership by loaning or otherwise * * * If the present trend is allowed to continue, there will be no chance in the future for a young man to start and own his own small business.

Indiana

Studebaker-Packard.—Present conditions were brought about by the rat race between Ford and Chevrolet with their chain-store and factory-controlled agencies, and if something is not done to correct this condition in the next 2 years, all of the independent makes and 75 percent of the "independent" Big Three dealers will be out of business.

Wisconsin

Pontiac.—If the individual small dealer is going to stay in business, the sharp advertising from the big cities will have to change. A lot of people fall for these giveaway ads, and a small volume dealer cannot compete with this very long.

Connecticut

Buick.—Too many dealerships are being organized with money obtained from sources closely related to the manufacturers. Dealers operating under these conditions are easily coerced to do business in a manner favorable to the manufacturer (i. e., low margin). This then sets the pattern by which all other dealerships must operate. It also prevents dealerships from organizing effectively to cope with the manufacturers, since these subsidized dealers are in a sense factory representatives.

New Mexico

Chevrolet.—I have been in the automobile retail business for over 30 years, and it has sunk to an unbelievable low of all times. Chevrolet during the late 1930's and 1940 built up a fine dealers' organization upon a quality, not quantity program. Now, in less than 3 years, they have torn this down, grasping like vultures for every penny of registration as if they were destitute.

Oklahoma

Pontiac.—I do not feel it right for a dealer to spend as much money as I have in 28 years advertising one car, Pontiac, and then have other Pontiac dealers come to my town and cut my throat by giving away all their profits just to take deals away from me.

Oklahoma

Chevrolet.—Weak dealers should be eliminated. Dealers selling to unauthorized dealers should be eliminated. Competition between good dealers should be free—no territorial security clause.

Illinois

Lincoln-Mercury.—We all hate to mention controls, but the factories and dealers will never be able to rectify present situation. The controls will have to come from Government. The entire dealer structure is slowly breaking down completely under this selling for no profit. The Government is going to have to protect our business.

Wisconsin

Chrysler-Plymouth.—We all wish for a better factory-dealer relationship. We wish to have this pressure of forcing too many cars onto us stopped. * * * The situation is quite serious, and unless something is done, it will ruin a lot of businesses financially. If factory pressure were stopped, bootlegging would stop by itself.

Oklahoma

De Soto-Plymouth.—I employ 30 people, and I would sell out my operation for 50 cents on the dollar. If the auto business does not change by some means, getting every vacant lot out of the new-car business, most of the new-car dealers will be broke.

Washington

De Soto-Plymouth.—Franchise contracts are of the "yellow dog" variety as the baseball players say. * * * I have in the past taken franchises for makes of cars and trucks where very few if any sales of that particular make had been made in my territory. I worked hard developing the line, yet was canceled out by the factory which took over the territory with large number of units and owners. * * *

I think that something has to be done to encourage small retail businesses such as ours. Sure, the factories are making huge profits because their sales are high and they get cash on the barrelhead. But it is different with small retail dealers. I believe it is just a matter of time before we'll all be out of business. * * * I for one am ready to quit trying if I could find somebody to buy me out.

Ohio

Lincoln-Mercury.—If every businessman and his employees in retail selling would exert themselves 5 percent more than they are, we would have the greatest prosperity ever.

California

Former Oldsmobile dealer.—Many manufacturers are signing up "fast" operators in hopes of obtaining volume. * * * Even though Oldsmobile has sound dealer-manufacturer relationships, due to the policies of most other manufacturers, the impact on the dealer at the retail sales level is such that he has to have "larceny in his heart" to survive. I made good money in the auto business, but the basis for making it became, by my moral standards, shadier and shadier. I sold out to go into the implement business and am glad I have done so. I am not an old pessimistic codger, but am 36 years of age and want to be proud of my business. * * * Right now, the automobile business is in the "red light" district of American retail sales.

Iowa

Pontiac.—The factory power to cancel or refuse to recontract a dealer with or without just cause, thereby jeopardizing a sizable investment and endangering the dealer's livelihood is indefensible and should be curtailed.

Kansas

DeSoto-Plymouth (for 27 years).—The Ford and Chevy battle for first place with Buick a second is wrecking the automobile business. Lots of deals are made where there is not a cent left for the dealer. Factories are encouraging this, telling the dealers to make a profit on financing.

The result is dealers all over the country are dying like flies. The remaining dealers of this year will be lucky if they can make one-half of 1 percent on their sales, while the factories are making 6 and 8 percent.

Kansas

Chrysler-Plymouth.—I have spent my entire adult life as an automobile salesman and dealer. I have never seen conditions nearly so bad. * * * There is no future in this business under present conditions.

Oklahoma

De Soto-Plymouth.—Cut prices by franchised dealers is doing as much damage as used-car dealers.

Washington

Nash.—I have been in or connected with the business for 30 years. Some used-car dealers have sold new cars as long as I can remember. * * * Actually, the number of so-called bootleg cars is very small. * * * If new-car dealers attend to their business properly and settle their own affairs, they would be much better off than to run to Uncle Sam for help. They are the very ones who bellyached about Government interference the most during the control period.

Washington

Studebaker-Packard.—I do not see anyone giving away suits, shoes, eggs, bread at sellers' cost. Why this compulsory giveaway by dealers of a product so vital to the American way of life?

California

Lincoln-Mercury.—Competition against the unethical operator is not free competition. No business can survive without a code of ethics. I believe the Government should pass legislation that will enable the manufacturers to strengthen their dealers by proper police action.

North Carolina

Ford.—It is really confused. Dealers are competing with each other to see who can sell nearer to the actual invoice cost than the other.

Washington

Dodge-Plymouth.—I believe overproduction is causing bootlegging, forcing the dealers to take cars. You will note there is very little bootlegging of Chrysler products. Ford and Chevy are the worst in our town.

Washington

Cadillac.—To me the major problem is neither bootlegging nor phantom freight. It is the nature of the contractual relationship between the manufacturer and dealer. Most contracts are written for 1 year, and have cancellation clauses permitting cancellation with or without cause in about 90 days. * * *

The contract should give to the dealer who needs to make a large investment in both money and time, the assurance that he can continue knowing that he will have his franchise canceled only for cause, and for causes definitely stated in the contract.

The nature of the present contract makes it possible for the manufacturer to coerce the dealer. * * *

Washington

Oldsmobile.—Most of the used-car or bootlegging dealers are of as good character and quality as any other business. It's only the few bad ones we hear about. * * * When the factory loads the dealer and threatens to cancel his franchise if he doesn't take the cars, the dealer then must do what he can

Washington

Buick.—I believe wholesaling of new cars to nonfranchised dealers, and ruses of many types to cover delivery of car not actually sold by authorized dealer is our largest problem. We are still expected to service these evidently bogus authorized sales by our factory.

New Jersey

Hudson.—I am one of the Little Three dealers. Today the finance companies are getting panicky on the independents, and the Big Three products retail cheaper than the independents. We are not in line with the Big Three in prices on cars. I do not believe there is any solution for the Little Three. The outcome of the battle between Ford and GM for leadership in the industry will definitely pull their dealers into ruination and chaos. In my opinion there is no way to stop this battle as America was built on free enterprise and competition.

Illinois

Chrysler-Plymouth.—The prevailing conditions are such that an automobile dealer in business today is not receiving a fair return for his investment. * * * Since the manufacturers are hesitant about enacting procedures and policies to provide more security and profit return for the dealers, it is the opinion of this dealership that Government legislation will be the determining factor in remedying the situation. * * * It is only fair that the small dealers be accorded the same rights to realize a profit as the stockholders of the corporations.

Kansas

Pontiac.—My experience has been that Pontiac tries to put the dealer in such a position stockwise that he must sell in desperation. When a dealer is desperate he will sell to anybody, even at a small loss just to get out from under his stock. I am sure that Pontiac is not the only one.

Iowa

Chevrolet.—False and come-on advertising is most detrimental and should be stopped.

Iowa

Pontiac.—Territorial security will correct most of the "wholesaling" of new cars. Production is too high for consumer demand. Let the implement dealers sell implements and the auto dealers sell autos.

Illinois

Pontiac.—The biggest problem for dealers who expect to make money is among the dealers themselves who bid too high for used cars in trade. If they

had guts enough to take fewer cars and make a fair profit on what they sell, everyone would be better off.

Illinois

Chevrolet.—I am opposed to territorial security clause, because it does not give the customer the right or opportunity to buy a new car from the dealer which he may prefer.

Ohio

Ford.—I would say as a whole everything is going good with Ford dealers with exception of misleading advertising by certain dealers.

Michigan

Dodge-Plymouth.—* * * There is not enough territorial security even Detroit when the factory puts in dealers where and when they please * * *.

Maryland

Oldsmobile.—* * * Suggest something be done about false and misleading advertising, that all dealers be treated equally regardless of size * * *.

Missouri

Chevrolet.—Our factory has never put pressure of any kind on us whatsoever to sell more cars. We have never been overstocked.

Minnesota

Retailers are trying to cut each other's throats and nobody makes any money.

Oregon

Chevrolet.—Dealers are their own worst enemies. Abuses are bound to exist in any situation. But it's a good competitive business and I hope you leave it that way.

Illinois

Ford.—A used-car dealer, with less investment and overhead can sell for less and is willing to accept less profit.

Minnesota

Ford.—A customer who buys a bootlegged car saves enough on the purchase price to pay other costs and servicing.

Pennsylvania

Nash.—I oppose a franchised territory whereby a manufacturer can impose a penalty on sales outside your territory. I feel that this would take away free enterprise selling.

Missouri

Ford.—Much as I hate to see it, I believe we need reins on wild credit.

Pennsylvania

Pontiac.—What the dealers need is a strong union to protect them—the same as the auto factory workers, so that dealers could be assured of some profit if they worked.

Wisconsin

Ford.—Misleading advertising on price, trade-in allowances and discounts should be regulated.

Missouri

Chrysler-Plymouth.—This business has fallen into a gutter racket.

Georgia

Oldsmobile.—The trouble with our industry is the battle between Ford and Chevrolet for first place.

New York

Hudson.—Unless something is done, a great number of car dealers will be forced into bankruptcy.

Virginia

Dodge.—As much as I dislike Government intervention, I would now say that I believe it is the only course that will save (the new car dealer).

Mississippi

De Soto-Plymouth.—The same as Government controls cotton production.

Florida

Studebaker-Packard.—The dealers are allowing themselves to be carried away with "wheeling and dealing." They treat honest profit as if it were something to be ashamed of. The dealers must get tougher moral fiber if the situation is to be straightened out.

Wisconsin

Ford.—I think something should be done to protect dealers against these so-called volume sales dealers.

Illinois

Pontiac.—The small dealer cannot operate on volume sales with small profit because he cannot sell enough cars.

Missouri

Chevrolet.—Dealers need to have guts to say no further deliveries.

Pennsylvania

Ford.—The factories are like the Army—they cannot make you do anything, but they sure can make you wish you had.

California

Dodge-Plymouth.—I have a full-page ad in my desk out of a Portland paper where they say they are giving \$1,000 off the price of a new Dodge. I know there is not that much profit in a new Dodge.

Nebraska

Buick.—False or misleading advertisement over TV and in newspapers is our biggest threat.

Midwest

Lincoln-Mercury.—A clean-up in advertising is long overdue.

California

Lincoln-Mercury.—The Federal Government should guarantee us against the inevitable repossession losses.

Wisconsin

Nash.—I think if the new car dealer would go to work, the used car dealer would not interfere with his make of cars.

California

Buick-Cadillac.—I feel that to a large extent dealers themselves are primarily responsible for the existing problems.

Iowa

Dodge-Plymouth.—We have never favored Government regulation of or interference in business * * *. But if the choice is between that and overproduction and all the resulting evils, we would rather put up with limited Government regulation.

Wisconsin

Chrysler-Plymouth.—Bootlegging is a result of other ills rather than a cause of any difficulty in the automotive industry. There must be some reason why businessmen sell for cost or less to get rid of something. That reason most logically is that he has more merchandise than he can retail profitably.

Texas

Lincoln-Mercury.—Overproduction is a big danger * * *. Auto dealers' overhead is very high, and profit per car is dangerously low. With overproduction, the dealer has no choice. He must sell cars with little or no profit and long terms.

Indiana

Buick-Cadillac.—The manufacturer doesn't seem to care who sells the cars—where, when or under what conditions * * *. They use a tremendous amount

of pressure on dealers; in fact, they never let up * * *. Their only objective is to outsell the other fellow.

Illinois

De Soto-Plymouth.—There is no mercy shown by any large automotive manufacturer when it comes to canceling a dealer's contract.

California

Cadillac-Oldsmobile.—The race for volume sales means tremendous volume profits for General Motors and Ford and little or nothing for the dealer except volume contingent liability.

The factories are shelving the quality dealer programs of former years for a bunch of cheap, unprincipled carnival operators who can provide volume outlets and sales and depend on gypping the public for their own profit. The factory will wink at any unethical dealer practice as long as he is producing volume sales.

Mr. MALETZ. Mr. Chairman, directing your attention to the report of the Subcommittee on Automobile Marketing Practices, of the Senate Interstate Commerce Committee, that committee sent a questionnaire to thousands of dealers throughout the country and received approximately 19,113 replies. The tabulation of the replies to that questionnaire is contained in the report which has been received in evidence.

Mr. Chairman, I also direct the committee's attention to a quotation from the report of the Senate Antitrust Subcommittee on General Motors, dated April 30, 1956, at page 84, beginning in the middle of the page:

Dealers contend General Motors pressure them to sell more cars by claiming their sales are below national average. An average implies a range; it is statistical nonsense to expect all dealers to be above national average. S. W. Fraser, general manager, Billingsley Motors, Portland, Oreg., stated that total Pontiac sales in his area were insufficient to satisfy General Motors' demands but that the corporation offered to renew his franchise if he would "hit national average." His testimony indicated that he did achieve the proportionate share of Pontiac sales assigned to him in his zone, 35.5 percent, but this did not give him national average.

Some dealers complained that General Motors attempted to control their profits. Don B. Robbins, Buick dealer, Fort Smith, Ark., charged that the general sales manager, Buick division, suggested that he lower his per-unit profit to sell more cars. The same suggestion was made to Mr. Fraser in a "before breakfast" telephone call from his general sales manager.

The battle for sales supremacy between General Motors and Ford reflects itself at the dealer level. Ed Hammer, Chevrolet-Oldsmobile dealer, Sheridan, Wyo., testified that he was told to outsell the Ford dealer in his city if he wanted to keep his franchise, and the Ford dealer was told to outsell him; there could be no tie.

Dealers insist they are forced to take more automobiles than their market will readily absorb. Because of factory pressure for volume sales, dealers state that they are obliged to make excessive trade-in allowances, and to cut suggested list prices.

According to witnesses, one of the most frequent types of pressure exerted by General Motors is to refuse to "preference" cars unless the dealer orders additional cars which he does not need or want. A "preference" is shipment to a dealer of the specific type car against his standing order from the factory. In support of this charge, Dealer Don B. Robbins submitted to the subcommittee a telegram which he received after requesting preference on some low-priced cars—

The CHAIRMAN. It is not necessary to read any further. We have read page after page of coercion and intimidation on the part of the manufacturer, and I think we will simply belabor it by going further.

We also are in receipt of a number of telegrams from Ford dealers making the assertion that they have been subjected to undue pressure and coercion. I could name those dealers, but I think in justice to those who have had the courage to send me these wires, I shall not make

their names public lest they be subjected to reprisals. But there is a long list of Ford dealers throughout the length and breadth of the land who have stated by way of telegrams and letters to this committee quite to the contrary to what we have heard here this afternoon about Ford's relations with its dealers.

You may go on, sir.

Mr. O'BRIEN. Thank you, Mr. Chairman.

The CHAIRMAN. Do you want to read your statement before we interrogate you, or wait?

Mr. O'BRIEN. It doesn't make a particle of difference to me, if you want to interrupt me it is perfectly all right, sir.

STATEMENT OF ROY E. O'BRIEN, ST. CLAIR SHORES, MICH.

Mr. O'BRIEN. My name is Roy E. O'Brien. I am a Ford dealer in St. Clair Shores, Mich., which is a suburb of Detroit and in the metropolitan area.

Mr. Chairman, I have a number of things on my mind, and I want to comment on them as briefly as possible. I have very deep feelings as a result of having sat through these hearings yesterday, at which time there were many statements made, some clear and others not so clear—but one particular thing still lingers in my mind which disturbs me very deeply, and that has to do with the accusations made by various people in connection with the meeting of Ford dealers held at Dearborn on Wednesday, June 20.

I attended that meeting. It was made up of dealers from all sections of the country. There were little dealers, medium-sized dealers, and large dealers.

Mr. Chairman, I am proud to be an American, and a free American businessman. I have always carried my responsibility and have taken the good with the bad, as long as I was fairly dealt with by others.

But I resent very much being called a puppet, because it is not true, and it is not fair. I am not a puppet of Ford Motor Co. or anyone else.

Prior to the meeting of Ford dealers in Dearborn——

The CHAIRMAN. Pardon the interruption. Who used the term "puppet"?

Mr. O'BRIEN. The NADA, the gentleman that is here, Mr. Bell.

The CHAIRMAN. Of course, no member of the committee used it.

Mr. O'BRIEN. I didn't say the committee, Mr. Chairman. I said in this meeting yesterday.

The CHAIRMAN. I understand.

Mr. O'BRIEN. Prior to the meeting of Ford dealers in Dearborn, from my own examination of this legislation I became disturbed about it, and consulted my personal attorney, who explained to me some of the possible consequences of this legislation which would hurt my dealership.

Subsequently, I was invited to attend the meeting in Dearborn, and there had the benefit of the views of Ford's general counsel, and also the benefit of discussions with other Ford dealers who attended the meeting.

I left that meeting generally concerned about the effect of this legislation upon my dealership, and I consulted my private attorney again.

I consulted my private attorney before I went to this meeting, I consulted my private attorney after I returned from the meeting.

The CHAIRMAN. May I ask this question, sir?

Mr. O'BRIEN. Yes.

The CHAIRMAN. Admiral Bell has presented a considerable amount of literature that was sent out by the association. Did you receive that?

Mr. O'BRIEN. Yes, I did.

The CHAIRMAN. Did you read it?

Mr. O'BRIEN. Yes, I did.

The CHAIRMAN. And you still felt you were not acquainted with the bill?

Mr. O'BRIEN. I certainly did, for the very simple reason if you will let me proceed, Mr. Chairman, that the impact of the bill, if it went on as a law, the effects of the bill were not clear to me in any other literature that I received from NADA, of which I am a member.

So I went to my own personal attorney before I went to Dearborn, to see if my position was clear.

The CHAIRMAN. Did you, after you had consulted with your attorney and had digested the bill, address yourself to the NADA and tell them of your views?

Mr. O'BRIEN. I didn't have the opportunity other than to do what I did. If you will let me read on, I think I will cover that.

The CHAIRMAN. Go ahead.

Mr. O'BRIEN. I knew nothing about the implications of the bill until I got my own personal counsel and sat down with him and gave him my interpretations. And then he told me what the effects would be, in the light of his judgment.

Then I went into the Ford meeting on the 20th, in Detroit, and Mr. Gossett explained his explanation, which I am sure was read into the record here yesterday.

The CHAIRMAN. Do you care now, or later, to tell us what the effects are that concern you in the bill, specifically?

Mr. O'BRIEN. The legislation as written—are you talking about the O'Mahoney bill, sir?

The CHAIRMAN. Pardon me?

Mr. O'BRIEN. Are you talking about the O'Mahoney bill?

The CHAIRMAN. I prefer the House bill, my bill, but you can refer to the Senate bill.

Mr. O'BRIEN. Well, I am sorry, sir. I apologize. I am sure—I talked to you on Sunday and you were very gracious when I called at your home, which was an imposition—I apologize for my ignorance of the terms.

The CHAIRMAN. You can refer to the Senate bill if you wish.

Mr. O'BRIEN. Would you rephrase your question, please?

The CHAIRMAN. You spoke of the effects that concern you in the bill.

Mr. O'BRIEN. Yes.

The CHAIRMAN. What are those provisions that concern you?

Mr. O'BRIEN. The first thing that I disagree with is Federal legislation or the need for it, in connection with the duties of a manufacturer and dealer, or their relations in connection with their various businesses. I don't—

The CHAIRMAN. How does that affect you, adversely?

Mr. O'BRIEN. Well, it gives—

The CHAIRMAN. How does it affect you to your detriment?

Mr. O'BRIEN. Mr. Chairman, yesterday, why, I told you I was confused. Now, you have got great prerogatives here and I am just trying to exercise some of my own, sir, if you will permit me. I have to explain it in just common language the way I understand the thing. I am not trying to be bigoted, I am trying to express to you what I feel.

In yesterday's testimony, going back to my attorney, he told me that this bill calls for certain specific laws, among them, as he interpreted it, a manufacturer in the automobile business could not, regardless of the loss of its business in a given area—in other words, there is an average that we talk about here today, that average is made up of good people and bad people and I think that you will all agree that the line will fall in the middle about here [indicating], there are two lines, and the good ones are here [indicating] and the bad ones are here [indicating], and the average dealer is in the middle, just about here [indicating].

Now, let us assume that Roy E. O'Brien is operating in a given area and he sells, say, 2,000 cars a year and for some particular reason I lose some of my selling technique and my percentage of the total market drops 15 or 20 points or 15 to 20 percent below average.

My attorney told me—well, my attorney told me that a manufacturer, to protect itself and sell more goods, which would bring down prices also giving better advertising—and I am only interested in Ford, my dealership—brings down prices, gives you better advertising, more money to do things with because you do them better, would have to put a dealer in that zone of influence—

The CHAIRMAN. We do not read the bill that way.

Mr. O'BRIEN. Well, Mr. Chairman—

The CHAIRMAN. All that the bill says—and it does not set forth specific criteria-like—is that the manufacturer must be fair.

Mr. O'BRIEN. Mr. Chairman—

The CHAIRMAN. And if the case develops that a manufacturer is arbitrary or—

Mr. O'BRIEN. Mr. Chairman, would you define the word "fair" to me? I am very ignorant when it comes to Websters Dictionary. What does the word "fair" mean, sir?

Mr. MALETZ. Well, Mr. O'Brien, are you aware of the fact that nothing in this bill would prevent a manufacturer from canceling a dealer who could not provide adequate representation?

Mr. O'BRIEN. I do not read it that way and I do not understand it that way.

Mr. MALETZ. Have you read the Senate committee's report on the O'Mahoney bill?

Mr. O'BRIEN. No, sir.

Mr. MALETZ. May I direct your attention to that report, page 5? That might clarify this problem for you.

Mr. O'BRIEN. I would be glad, sir, to be enlightened. I appreciate it.

Mr. MALETZ. On page 5 of the Senate committee report, there is a definitive expression of the legislative intent, and I quote:

This bill does not prohibit the manufacturer from terminating or refusing to renew the franchise of a dealer who is not providing the manufacturer with adequate representation.

Does that—

Mr. O'BRIEN. Well, it is, indeed, but in light of that statement, sir, why the legislation proposal?

The CHAIRMAN. Let me ask you this. There are some manufacturers—and they may not be Ford, Ford may be unusual—but there are some manufacturers who may behave toward their dealers in an arbitrary and unfair manner. This bill is designed to protect the dealer and to prevent the manufacturer from doing certain things. That is why we have this bill, and certainly, there is nothing I see in that is harmful to the dealer; there are no conditions imposed on the dealer; the only thing it does is impose fairness on the manufacturer.

Mr. O'BRIEN. Well, sir, Mr. Chairman, if I understand counsel properly, if that is to protect the dealer who is working under a manufacturer with that type of thinking, then why couldn't that particular manufacturer with that type of thinking juggle the thing around and cancel him anyway, if the law says he can?

The CHAIRMAN. Well, the bill if it becomes law would not permit it, because if the dealer feels aggrieved he can bring an action for damages against the manufacturer in a court.

Mr. MALETZ. Mr. O'Brien, may I, in the interest of clarifying the congressional intent ask you this:

Is it your understanding, if this bill should become law, that the manufacturer still could cancel the dealer for any reason whatsoever?

The CHAIRMAN. We will have to recess, there is a teller vote on the floor. I will be back as soon as I have voted.

(The prepared statements of W. E. Currie; Robert Wright; J. C. Lewis, Jr.; J. O. Barron, Jr.; Jack Beasley; J. A. Kelly; Griner Waters; Fred R. Collins; J. C. Bowen, Jr.; J. H. Kultgen; and R. J. Auffenberg, are as follows:)

STATEMENT OF W. E. CURRIE

This statement is in connection with bills S. 3879 and H. R. 11360.

I am W. E. Currie, Jr., Tipton, Ga. I own and operate Bill Currie Ford Co., Tipton, Ga. I have been a Ford dealer for 15 years.

I feel that legislation of this type is absolutely unnecessary. Factory dealer relations can and will be handled by the parties concerned. I am sure that you cannot design any legislation, and certainly this bill is a good example, that will make a good factory out of a bad one and, of course, the same will go for the dealer.

Here I want to mention the feeling of several of my dealer friends. They, as well as myself, feel that we do not want any legislation that concerns our business since it brings on more complications from year to year for small business like ours. We also feel that our governmental bodies have and will have plenty to do without passing a short legislation of this type that will cause, if passed, many volumes of ground rules and court decisions to be written, all of which would be unnecessary.

Since I am a part of small business, and certainly we have our problems, I would like to ask you to defeat this bill. Our problems will never be solved in this manner.

STATEMENT OF ROBERT B. WRIGHT

My name is Robert B. Wright. I am a Ford dealer in Moultrie, Ga., where I have represented Ford products for more than 35 years.

I have studied the O'Mahoney bill and the Celler bill and have discussed them with Ford dealers in my area and with dealers of other make cars.

On June 21, I wrote the attached letter, on my own initiative, to the Representative in Congress from my district, the Honorable J. L. Pilcher. A copy of the letter is attached. In the letter I gave him my views with respect to this proposed legislation.

Later, I was so concerned about this legislation and its possible effects upon my business, the industry, and the public that I called together the dealers of the various makes of automobiles in my town, and after discussion with them, we all agreed that we should send another message to our Representative, Mr. Pilcher.

The resolution which we prepared, signed, and sent is attached herewith.

In our opinion, this proposed legislation is not only unnecessary, but would be the beginning of Government regulation of our business. We do not think that this is desirable or necessary, and request that the industry be given a fair chance to work out its own problems as it has always done in the more than 35 years that I have been a Ford dealer.

JUNE 21, 1956.

Hon. J. L. PILCHER,
*House of Representatives,
House Office Building, Washington, D. C.*

DEAR J. L.: With reference to the O'Mahoney bill, S. 3946, regarding the automobile dealer and manufacturer when this bill or a kindred bill comes before you for attention I would greatly appreciate you giving this matter your careful consideration.

The proposed legislation is very controversial and many of your friends and the dealers will have a very different viewpoint.

It is my belief that we should keep the Government out of business as far as possible. The more regulation and supervision that we have the more confusion and more cost to the consumer.

It is my opinion that the bill referred to will be very detrimental to the automobile business as a whole and could cause serious repercussions.

As a dealer, for more than 35 years I have never had a problem that could not be worked out satisfactorily with the factory and I have had many. They have made mistakes and I, as a dealer, have made many.

This bill could change the method of distribution of automobiles and would certainly add to the cost of the car should they have to purchase cars from dealers that were overstocked, in a depressed time the liability would be enormous.

I am opposed to the bill as written and trust that you will oppose it. We have enough troubles without adding to them.

With best wishes and kindest personal regards,

Yours sincerely,

R. B. WRIGHT.

AUTOMOBILE DEALERS OF MOULTRIE,
Moultrie, Ga., June 30, 1956.

Hon. J. L. PILCHER,
House Office Building, Washington, D. C.

DEAR MR. PILCHER: With reference to S. 3879, O'Mahoney bill, regarding matters pertaining to automobile manufacturers and automobile dealers:

We, the undersigned Automobile Dealers of Moultrie, Ga., are opposed to this bill. We feel that this is a step in the direction of Government control of our business which we very definitely do not want.

We appreciate the fact that the NADA, of which we are members, has accomplished some very fine things. They are sponsoring this legislation as a result of a questionnaire that was mailed to all dealers, which we understand a majority expressed a desire for some form of legislation that would eliminate bootlegging of new cars, etc.

Most of us have operated under Government controls in the past, such as OPA, NRA, and regulation W. We found that the unscrupulous operator ignored the laws and the legitimate dealers were greatly penalized as a result.

We trust that you will give careful consideration to this bill should it come before you.

Yours very truly,

COLQUITT MOTOR CO. (CHEVSELER-PLYMOUTH),
 By ERIE O. SINCLAIR.
 SAM DUGGAN, THE CHEVROLET DEALER,
 By CARLTON DUGGAN.
 GENE HODGES MOTOR CO. (BUICK),
 By E. E. HODGES, Jr.
 KENNEDY LINCOLN-MERCURY CO.,
 By J. M. KENNEDY.
 J. M. WILLIAMS MOTOR CO. (DE SOTO-PLYMOUTH),
 By J. M. WILLIAMS.
 POITEVENT OLDSMOBILE,
 By A. R. POITEVENT.
 SKENE PONTIAC (PONTIAC-GMC TRUCKS),
 By GEORGE N. SKENE.
 WRIGHT MOTOR CO. (FORD),
 By R. B. WRIGHT, Jr.

STATEMENT OF J. CURTIS LEWIS, JR.

My name is J. Curtis Lewis, Jr. I am a Ford dealer in Savannah, Ga., operating as the J. C. Lewis Motor Co., Inc., of which I am the owner and president. My late father founded this business in 1912 at which time he started with little or no money of his own and \$1,000 borrowed capital. The dealership has handled Ford products exclusively and continuously since 1912. From its humble beginning, our company has grown to be one of the largest dealerships in the South. This continuous growth, like the expansion of our country itself, had to weather several depressions, periods of oversupply, shortages, and other trying periods. Our progress has been made under the free competitive system. Our company has always managed to make money—in bad years as well as good. I have been president of J. C. Lewis Motor Co., Inc., for approximately 10 years, and having previously observed the practices and policies which have made our business successful, I have tried to continue to run our business on a sound basis, realizing that there is no substitute for intelligent planning and hard work.

I belong to several trade associations—NADA, Georgia ADA, and Savannah ADA. I come in contact with all kinds of dealers. Some dealers are losing money and appear to be very discouraged about the prospects of the future. In this pessimistic state of mind, it is difficult to think clearly and act wisely. The saying of "any port in a storm" is sometimes too hastily adopted.

The automobile business is, of course, one of the major segments of our national economy. I am proud to be a part of this great industry. We are experiencing an adjustment period in this business and, frankly, I am not smart enough to predict the ultimate outcome; but, I do know that other lines of business have their troubles too and solution by Government intervention is not to be sought after. In the competitive market place, business will never be immune to problems and periods of adjustment. Certainly no clear thinking businessman who has made money in our free competitive system can believe that Government intervention is the panacea for all our business ills. Some people in our business would like to think that a small amount of control by the Government in our factory-dealer relationships is desirable, and that the degree of this control can be limited. Such a condition would be like being "just a little bit pregnant." Either the condition exists or it doesn't.

I am sure that the sponsors of the O'Mahoney bill have been sincere in their effort to reduce to legislation the apparent desire of some dealers for Government intervention. I commend those Members of Congress who have interested themselves in improving or correcting some of the "ills" in the automobile business. They have already rendered real service in that many of the problems in this business are brought to light, and in most cases, solutions were being worked out between manufacturers and dealers without the need for legislation.

I have talked with my lawyer about the O'Mahoney bill and am fearful that should it be made law, it will create a far greater problem than the ones which it attempts to solve. I am speaking specifically of bootlegging. It is my observation that certain dealers who have engaged in the practice of selling

new cars to nonfranchised dealers for resale have done so—not because they were being pressured into taking more cars by the factory—but, rather, because they couldn't resist the temptation to make a quick buck. In instances where I reported various motor numbers of bootlegged cars to the factory, and where the bootlegger was identified, steps were taken by the factory and bootlegging by these unethical operators ceased. Under the O'Mahoney bill, action with respect to this type of dealer would be impossible, and the bootlegger would prosper, since no persuasive effort could be applied by the factory.

I have always been able to deal with my factory directly and candidly without the aid of any intermediary. I expect them to try to sell their merchandise aggressively and in volume—the same way I must sell mine if I am to remain in business. However, I order and accept only that merchandise that I need and wish to buy. I recognize my responsibility to the factory to sell their products in volume, and I think they realize their responsibility to me in the necessity of supplying the right product at the right price. If differences arise between us, and I am sure they will as in any other human relationships, I still think that I will be able to take care of myself. I certainly don't want the Federal Government entering this phase of my business life; there is too much Government regulation in my business now.

If dealers who think that this legislation will help them will stop to analyze the situation, and consult with their own lawyers, as I have, I think they would concur with me that this legislation will certainly be harmful to our business in the long run.

I am opposed to it, and certainly hope that it does not become law.

STATEMENT OF J. O. BARRON, JR., FORD DEALER, HATTIESBURG, MISS.

My name is J. O. Barron, Jr. I live in Hattiesburg, Miss., and am president and general manager of Barron Motor Co., the Ford dealer in that city. I want to thank this committee for allowing me to appear before it, and after I make the brief statements that I am going to make, I would welcome any questions from any member pertaining to the subject we are discussing.

Barron Motor Co. first received its sales agreement from Ford Motor Co. on May 21, 1918, and has been in continuous operation since that time. I became general manager on February 1, 1936, and am still working in that capacity. To give you some of the background of our operations:

In 1936 we were capitalized at \$100,000, and had a deficit surplus of \$40,000. Since that time we have recapitalized, and now have a paid-in capital and surplus of over \$350,000. All of this improvement in the capital position came from the earnings of the business. Also, during the past 10 years, the officers and owners of this company have drawn out in dividends and salaries over \$400,000.

I am giving you the above statement to show you that the Ford business has been a profitable business over a number of years, and we see no reason why it shouldn't continue to be, if allowed to continue the same operations we have had without outside interference.

I have managed this business under the NRA, OPA, and regulation W; and, under all of them, it has been much more difficult and time-consuming to operate than during the times when we have operated without them. I certainly don't welcome any legislation that would hamper us in any way from doing legitimate business on a competitive basis.

I have talked to a number of competitive dealers in the automobile industry, and can truthfully say that I have not found one of them that was in favor of the O'Mahoney or the Monroney bills. I understand that Congressman Celler's bill is the same as the original O'Mahoney bill.

The General Motors dealers I have talked to tell me that their new sales agreement contains practically all of the provisions set out in the Monroney bill, and they see no need of having it go into Federal law when it is already contained, as said before, in their agreement. It is my understanding that the NADA is in favor of these bills and I certainly wouldn't want to say anything that would be detrimental to the NADA, but I think in this particular case that they have not given the dealers enough information on these bills to really get an intelligent vote from the dealers.

You might argue that all the O'Mahoney bill does is nothing more than give the dealers the right to sue, and that we don't have to use it if we don't want to.

The trouble with that is that it gives the right to bad dealers as well as good, the troublemakers as well as everyone else. The manufacturers will probably try to protect themselves against nuisance suits and everything they do to protect themselves from suits by the bootlegging dealers will be just as hard on me as it is on the bootlegger.

The definition of "good faith" in this bill can be construed in any number of ways. What I think would be an act in good faith could be entirely different from someone else's conception. The net result might very well be to give the bootleggers and other unethical dealers far more leeway than they have at the present time.

Speaking of bootlegging, the State of Mississippi has supposedly been dry as long as I can remember, but legislation has yet to stop the making and transportation of corn whisky. Neither do I think that legislation will stop the bootlegging in the automobile industry.

I do not want to give the impression here that all my dealings with Ford Motor Co. have been all roses and honey, but neither would I say that the 24 years of my married life have been the same. In both instances, with Ford and my wife, we have always been able to sit down and iron out any difficulties, and I am thankful to say, we are all still together and hope to remain that way for many years to come.

The above statements are made of my own free will and accord, and without any promises of any favors, or any threats or coercion from anyone.

Mr. Chairman, I also wish to present to the committee a resolution of the Hattiesburg Automobile Dealers Association which was unanimously adopted after thorough discussion at a special meeting on June 29, 1956.

"RESOLUTION, HATTIESBURG AUTOMOBILE DEALERS ASSOCIATION

"Resolved by the following dealers, unanimously, at a special meeting of the Hattiesburg Automobile Dealers Association, held in Hattiesburg, Miss., on June 29, 1956, that Mr. J. O. Barron, Jr., be instructed to present to the Congress of the United States our request that action on all pending bills concerning dealer-manufacturer relations in the automobile industry be deferred, and that such bills not be acted on or passed at this session of Congress in order that we may have more time to look into them and see whether they are needed are not and whether they will be helpful or not.

"Auto Service Co., Willys Jeep; Barron Motor Co., Ford; Farrior Motor Co., Buick; Talbert Leigh, Dodge-Plymouth; Roscoe Moore, Pontiac; Joe Morris Motors, De Soto-Plymouth, GMC trucks; McMullan Motors, Chrysler-Plymouth, International trucks; Parksway Motors, Lincoln-Mercury; Polk Cadillac Motors, Cadillac; Ryan-McArthur Motors, Chevrolet; Southern Motors, Oldsmobile."

Again, I wish to thank you for the opportunity to appear before you.

STATEMENT OF JACK BEASLEY

My name is Jack Beasley. I am the Ford dealer in Altoona, Pa., and have been since December 1954. Previous to that I was sales manager for Carl Beasley Co. in York, Pa. My family has been interested in the automobile business for approximately 43 years, and I have, so to speak, grown up with it.

Upon consideration of the Celler bill, I find that this bill tends to limit the factory and the dealer in their movements under the free enterprise system. You could liken the factory relationship with its dealer organization to that of my relationship with my salesmen, and I would be very upset and wary of a situation where I would be faced with a lawsuit each time I felt that a salesman was not doing his job and should be let go. I ask my salesmen to do a minimum job, which is the average in the industry. I pay them well and with no limit to their earnings in any particular year.

Since being in the Ford business on my own in Altoona, I feel that I have been paid well by the business. Previous to 1955 and my purchasing of the Ford dealership in Altoona, the dealership had consistently lost money for several years, and was considered a bad investment by everyone that had looked at the dealership for investment purposes. However, in 1955, my new company, Jack Beasley Ford Sales, Inc., had a return on its investment of over 86 percent (before taxes and bonuses) and during 1956 year to date our profits are

ahead of last year. I want to point out that it was through no influence of the Ford Motor Co. or any other source that made these profits possible. We are selling the same car in the same town as my predecessor was prior to my purchase of the dealership.

I do not mean to say that it has been an easy job. We have had to do a lot of work, but the work has paid off handsomely, as you can see for me and my organization.

As yet I have had no misunderstanding with Ford Motor Co. that we have not been able to work out amicably and satisfactorily between ourselves.

I do not believe that the Ford Motor Co. or any other auto manufacturer or any other industry that is properly operated would be so foolish as to cancel their authorized retail outlet unless that retail outlet was not performing to minimum standards. The automobile business has been built on successful dealership operations. I do not believe that any legislation will be of value under these circumstances.

I appreciate the opportunity to appear before this committee.

STATEMENT OF JOHN A. KELLY

My name is John A. Kelly. I have been in the automobile business for the past 31 years, and I wish to state that the past 13 years, during which time I have been connected with the Ford Motor Co. as a dealer in Stamford, Conn., have been very satisfactory. I see no reason why we should ask for assistance from the outside to protect us from the manufacturer.

Speaking from my own experience, I have never been asked by the manufacturer to conduct my business in any way which has proven unprofitable, such as accepting unit parts and accessories that I had no sale for. I have been asked to participate in some programs which I did not think would benefit my organization. I discussed these matters with management, and sometimes they agreed with me and sometimes they did not. But, in the overall picture I am one dealer that trusts the manufacturer, and I don't believe that I need any legal clubs to have the manufacturer continue to be as honest in the future as he has been in the past.

Gentlemen, to give you my opinion of this automobile business, and I speak only for myself and hope that I am not sued for this, we have some dealers that want to "make it with a pencil." Just the other day I attended a dealer meeting, and a discussion came up of "what could we do to make these factories do something so that we could make more money."

I asked one dealer in particular, "What do you want them to do?" His answer was, "Slow down production. Have a scarcity of automobiles. Then, fellows, we can sit back on our front doorstep and have a friend call up for a friend, and see if we couldn't do him a favor by letting him have an automobile." Gentlemen, I ask you, is this the kind of business you want? Slowing down progress. As you all know, as well as I do, this is a volume business, and I mean volume with profit. The reason I say "profit" is that I recently had the pleasure of visiting with 125 dealers, and I talked to dealers, and these are volume dealers, who made from \$50,000 to \$300,000 in 1955. Is that bad profit to make? Now, you might say, "Yes, these are hand-picked dealers." If successful dealers are hand-picked, maybe these were hand-picked dealers; but it is my belief that I can pick many times that number of dealers who are making real money, and the reason is because they have a rounded out organization.

I wish to further state that in the 13 years of the operation of our dealership, we have never had a losing month; in other words, we have never been in the red any month. Sure, some of the years it took more work, more thought, and more management. In an overall picture, the entire 13 years have been very profitable. This was brought about by having a well-rounded, departmentalized organization with an efficient service department, used-car department, cost-accounting department, etc., and personally following each one to see that they carried their share of the load.

1955 was a very profitable year for me, and based on the first 6 months operation of 1956, it looks like I am going to make just about as much this year as I did last year.

I only hope that the automobile business will be continued in the same way so that I can continue to make profits. And when I pass out of the picture and leave it to my sons, I hope they will pick up the training I have given them and

consider the suggestions and accept the kind of help that the manufacturer has given to me.

Gentlemen, it is my firm belief that we do not need any automobile legislation to assist us in operating a profitable business, and I make this statement from actual experience, and these are facts that can be verified.

In 1943, I purchased a Ford dealership in Stanford, Conn., which at that time was losing money, and of course, you realize that the war was on and everything at that time was frozen. It's a fact, as the records will show, that I borrowed money to open this place. We now operate a successful dealership doing in excess of \$3 million worth of business a year with profits being very satisfactory, and this has been done by having faith in the manufacturer who assisted me in counseling with me and giving me excellent advice which I consider very helpful. Sometimes I followed this advice; sometimes I didn't. At no time in the 13 years has a manufacturer ever put any so-called pressure on me by insisting that I overstock with merchandise.

I want to say again that I see no good reason why we should ask assistance from the United States Government in any way, shape or form in this automobile business. I think we can have faith in the manufacturers as it is to their interest to see that we make a profit, as much as it is in ours. So I ask you to let us deal with the manufacturer in our own way, as it has been shown by thousands of dealers in the United States that the automobile business can be run on a profitable basis, if we deal fairly with the manufacturer as we have in the past.

I see no reason why we should have the United States Government step in and give us this bill which gives the dealer right to sue the manufacturer. If we have been so successful operating on the basis of mutual trust and confidence, we certainly don't need for the Government to open the door for some disgruntled dealers to throw the industry in litigation. The controversy and law suits that might be stirred up by this bill will end, nobody knows where. If those who are so anxious to bring law suits would operate their dealerships instead, it would be better for all of us. In this business there ought to be less suing and more doing.

What I'm afraid of is that your legislation is going to force dealers and manufacturers to be antagonists instead of friends, and I don't want that. I want to be able to go ahead as we have done in the past.

Thank you very much.

STATEMENT OF MR. GRINER WATERS, FORD DEALER IN LAKELAND, FLA.

My name is Griner Waters. I am a Ford dealer in Lakeland, Fla., operating under the name of Lakeland Ford Co., Inc., having purchased the dealership Friday, October 13, 1944. Previous to that I was connected with Ford Motor Co. for approximately 20 years.

I am sure that Senator O'Mahoney was sincere in introducing this bill. I am sure that he feels it would improve the present condition of automobile dealers. But, having been connected with the automobile industry these 31 years, I am of the opinion that the dealers, along with the manufacturer, can work out their own problems without this legislation. I would like to state that, generally speaking, the automobile business, I would say, was good over a period of approximately 8 years after World War II. But approximately a year ago, in my opinion, the supply had begun to catch up with the demand, and, I believe, caught some dealers off base, so to speak, as well as manufacturers, and we ran into difficulties. I think in some instances the dealers misled the manufacturer and the dealers were misled by the public, our customers. But by hard work, and good business tactics, I am sure that we can solve our own problems together. We, the Ford dealers, along with Ford Motor Co., established dealer council several years ago and I believe that we have made a lot of progress, and with continued efforts on the part of the dealers and the manufacturer, I am sure that we can work out of this situation without Government legislation or intervention.

I note that in phrasing this bill they refer to "coercion" or "intimidation," and there is a question in my mind as to how far the word "coercion" can go, and I believe that it would be hard to define it in this instance.

I am definitely against any form of legislation at this time. I believe that it would be like an argument between a man and his wife. It might go along all right until the third party takes sides with either one. Then somebody would get hurt, and I am afraid a similar situation could exist in this instance, and it could be the public who would be hurt.

I see no provisions in this bill that would affect the public particularly, but I do see the possibilities of it affecting the relations between the manufacturer and the dealers, as I am sure that it would be necessary for the manufacturer to adjust its entire distribution system. This is a competitive business, and this country was built around competition and will always be, and I am sure that is what has made this country what it is today.

I believe that NADA made a survey the first of this year which led them to favor this legislation, but even the survey did not speak for all the dealers. I was against legislation in the automobile industry at that time and I think now, legislation would do more harm than good, and sincerely hope that this bill will not be passed.

STATEMENT BY FRED R. COLLINS

My name is Fred R. Collins. I am a Ford dealer in Streator, Ill. The name of my firm is the Collins Motor Co. of which I am the sole owner. I have been an authorized Ford dealer since May of 1944 and prior to that had approximately 20 years' experience which includes experience as a factory representative for Chevrolet, retail automobile salesman, sales manager and general manager for successful automobile dealers in the Midwest—principally in Chicago and Minneapolis.

I certainly appreciate that Senator O'Mahoney in sponsoring this bill—S. 3879, commonly referred to as The Dealers' Day in Court is of the sincere opinion that he is doing something that will be of great benefit to the automobile dealer. However, I am of the opinion that Senator O'Mahoney has gathered a vast majority of his information from a group of comparatively newcomers in the automobile business who have enjoyed a postwar prosperity but are now suffering not from dealer-factory relationship but rather from a normal highly competitive selling field.

With the exception of a few years, this business has always been highly competitive and as one of its veterans, who has experienced normal, prosperous, and depressed markets, I am firmly convinced that the cure for the present ills in the automobile business is not through Federal legislation.

The amended bill, in my opinion, will make it impossible to stop bootlegging and other practices that dealers in general agree should be corrected. It will represent a step in Government legislation, in this industry, that would be the wedge to opening the door to other Federal laws concerning the dealer and manufacturer and, in my opinion, be followed by other regulations under Federal and perhaps State laws. This bill I believe will limit the manufacturer in such ways as to cause damage to all parties in this business and will further cause serious considerations of their looking for a new method of distribution to replace the present authorized dealer setup. The automobile manufacturer and successful dealers from coast to coast are extremely conscious of the importance of each others prosperity and if left alone we will intelligently work out our own problems.

I prefer taking my chance under our American competitive free enterprise system; consequently, it is my earnest hope that bill S. 3879 is defeated.

STATEMENT OF JOHN C. BOWEN, JR.

My name is John C. Bowen, Jr. I am the manager of the St. Francis Motor Co., Forrest City, Ark., which operates an automobile dealership under a franchise from the Ford Motor Co. and is a partnership consisting of my wife and myself.

I very much appreciate your giving me an opportunity to appear before you and present my views on H. R. 11360 and S. 3879, which are of vital importance to me and my business.

The St. Francis Motor Co. was started in October 1914, by Mr. Louis McDaniel, who left a lucrative hardware business to sell new-fangled automobiles when the road system of Arkansas consisted of a few dirt roads. He reared a family of 4 daughters, went through 2 major wars, 1 major depression and a few minor ones, and died in April of 1945 of cancer, leaving a sizable estate in addition to his automobile business.

At the time of his death, I was with a PT squadron in the Southwest Pacific, but as Mr. McDaniel had indicated, since he had no son of his own, he wished for me

to continue his business, my wife asked Ford Motor Co. for the franchise and in April 1945 was granted it for me to manage when and if I returned from my duty with the United States Navy. I might add that, on the day of Mr. McDaniel's death, there were many qualified and experienced applicants for this franchise.

Since that time, a matter of a little over 10 years, the St. Francis Motor Co., which could be classed as an average-sized dealership, has earned for us several times over what an average person can expect to earn in a lifetime.

I am taking your time to give you these personal facts because in my humble opinion this bill really hinges on two words: "good faith." My own personal story illustrates the kind of good faith the factory has shown toward me. I couldn't ask for better faith, in my judgment. Now, however, your bill proposes to inject someone else into the relationship between my factory and me to judge whether we are showing good faith toward each other. I believe the persons involved are better able to determine the good faith of each other than would be a third party who may or may not be able to understand all the facts and ramifications in each case. I don't want the factory to figure it has to dot every "i" and cross every "t" with me in order to protect its interests with some other dealer; and that could very well happen if the factory has to start guarding against lawsuits from its dealers.

I want to say that I am opposed to this legislation strictly from a personally selfish viewpoint, as our company has operated successfully under the present franchise system for over 41 years, and I do not want to see it changed.

Quite frankly, at times I have disagreed with policies of the Ford Motor Co., and occasionally quite violently. I win some argument and they win some. They have made mistakes and I expect the company to do so in the future, as human beings direct its affairs. Also, I might add that I have made many mistakes myself. However, in spite of these mistakes, I believe that both the Ford Motor Co. and I have acted in what we considered "good faith."

It is just as vitally important to each individual dealer and his business as it is to the automobile manufacturer that a strong retail organization be maintained in the form of an alert and aggressive dealership in each community in the United States. A good part of the value of the franchise which the St. Francis Motor Co. holds is based on the fact that there is a strong and farflung group of dealerships.

If the manufacturer and each dealer must judge each of their acts in the light of what interpretation the judge or jury of some court might place upon them, I am afraid that it will be impossible to maintain our present relationship and to handle the problems of our business, arising from day to day, as they should be handled.

STATEMENT OF MR. J. H. KULTGEN, PRESIDENT, BIRD-KULTGEN, INC., WACO, TEX.

My name is J. H. Kultgen. I am president of Bird-Kultgen, Inc., a Ford dealer of Waco, Tex., a city of 125,000 people. In 1922 I started as a retail Ford salesman. For the past 20 years I have been a Ford dealer at Waco, Tex.

During these 20 years, bad and good, our business has never had a loss year. Starting in 1936 with a capital of \$25,000, the business now has a net worth of many times the original investment. During the past 20 years my associates and I have tried to be good citizens and we think we have served our community well because our business has steadily increased to a point where we sell more cars (1,264 last year) than any other dealer in our area.

I am definitely opposed to the H. R. 11360 bill for a number of reasons:

1. While we have had differences with our factory from time to time, I have seen a steady and, during the past 10 years, a rapid improvement in factory-dealer relations before any threat of Federal legislation even existed. I am confident that these relations will continue to improve without the imposition of such legislation and I am perfectly willing to stake my own business future on this opinion.

2. From 1942 until 1945 I took a leave of absence from my business and served the Government under OPA, acting finally as district director for west Texas. Here I learned that Government regulation is not static. Government regulation starts from a small beginning and leads and leads, ever growing, to larger and larger proportions. The vagueness of the current legislation will lead to interpretation which will be reinterpreted as new situations arise. These many

interpretations will demand corrective legislation and we will find that we have created a whole host of new problems not now foreseeable.

3. Under the proposed bill there would be a tendency on the part of both the manufacturer and the dealer in any anticipated controversy to build up detailed files in preparation for court action. Such a tendency would certainly destroy the wholehearted cooperation necessary to insure the hard-selling techniques that bring the utmost in value to the ultimate consumer.

4. The fast changing, dynamic character of the business of producing and retailing automobiles is particularly in need of as much freedom of action as it can possibly have. The present system of marketing automobiles has given the American public the finest, by far, in automotive products at the lowest possible prices. Federal regulation, however innocuous in appearance, can serve only to inhibit both the manufacturer and the dealer and eventually the increased prices which must necessarily follow will be passed on to the consuming public.

5. The Celler-O'Mahoney bills would be the opening wedge leading to further regulation of our business.

6. Special laws aimed at a particular industry are not a part of the American way of life, especially when such laws can have no possible beneficial results to the average citizen. The current legislation seems to be purely class legislation.

7. The bills under consideration would help rather than harm the automobile bootlegger. These bills would freeze the bootlegging system in its present state. The manufacturer would be inhibited in his efforts to eliminate the bootlegging franchise dealer. Efforts to uncover and eliminate bootlegging could too easily be termed as "coercion." Bootlegging is as much the fault of the unsuccessful franchise dealer as it is the fault of the manufacturer, although each must accept his share of the blame.

8. By and large, retail automobile dealers of sound experience, using average business judgment, have prospered. The present system of merchandizing automobiles, while it is not perfect, has stood the test of time. Should the current legislation pass, automobile factories will, without question, continue to operate. The public will continue to buy cars. The only possible actual casualty would be the dealer organization as we now know it and as it has existed down through the years. This legislation and the legislation that will inevitably follow it, if passed, could conceivably result in a modification or a complete change of present distribution methods. Should this result, it is difficult to conceive that higher prices and less efficient service to the public would not result.

9. For the past few years our Ford dealers have been taking a much greater part in the shaping of the policies of the company as a whole. It is my opinion that most of the points of difference between the manufacturer and the dealer can be equitably reconciled without outside interference. This is demonstrably true if anyone will examine the record of what has happened during the past 10 years in our organization.

My appearance here is in the sincere belief that passage of the current legislation will be detrimental to the dealer, the manufacturer and, most important of all, to all of the buying public. I am, therefore, opposing this legislation and recommend its defeat in the House.

STATEMENT OF R. J. AUFFENBERG

My name is R. J. Auffenberg. My dealership is in Belleville, Ill., just outside the city of St. Louis, Mo.

Last year we sold 237 new cars. We employ between 17 and 20 people at my dealership. I am a NADA member and I am for correction of some of the situations which NADA is trying to correct, but I am opposed to legislation as the corrective measure.

It seems strange to me that we should be the first or only manufacturer-distributor field to have legislation to control the factory-dealer relationship. This legislation basically sounds good, but once Federal legislation is enacted, it is often broadened in its scope and aspect so that it can destroy freedom of contract between factory and dealer.

The automobile factories must sell their dealers their products. If they attempt a hard selling job through factory salesmen, this may be construed by the courts to be coercion or intimidation.

Gentlemen, what is the difference between coercion or intimidation, and selling or salesmanship? If the factory is restricted in its sales efforts, volume must necessarily go down, with the inevitable result of higher prices for automobiles to Mr. John Q. Public and maybe less sales for me as an auto dealer. Labor will also suffer because activities of this large American industry will be curtailed and a smaller working force required.

If a manufacturer must make a contract for every contingency for the worst possible dealer, then the best dealer and the average dealer will not get as good a contract as they now have. NADA has done much to alleviate problems in the dealer-factory area and there are many, many more problems which still exist. But I think the NADA is a bit overzealous and may be creating a monster which could destroy its own brood.

I am opposed to this bill because I, for one, don't think we need legislation to cure the problems of the auto dealer. Nor do I think we need legislation to improve factory-dealer relations. However, I feel that all the auto dealers should be considered and be heard on any type of legislation they may want. I have the feeling of a bill being railroaded through by NADA without hearing from all people involved in this group so that they can fully understand the bill and its effects before its passage.

I am convinced that the American free enterprise system is the best system, so let's leave it that way. I don't want to come to Washington to settle contractual differences which may exist between myself and my manufacturer.

Thank you, gentlemen, for allowing me to testify.

(Whereupon, the committee adjourned to reconvene at 10 a. m., Monday, July 9, 1956.)

AUTOMOBILE DEALER FRANCHISES

MONDAY, JULY 9, 1956

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 10 a. m., in room 346, Old House Office Building, Hon. Byron G. Rogers presiding.

Present: Representatives Rogers, Celler (chairman of the Judiciary Committee), Quigley, McCulloch, Keating, and Scott.

Also present: Representative Crumpacker; Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel; and Thomas H. McGrail, assistant counsel.

Mr. ROGERS. The meeting will come to order.

We have statements from Representative William A. Dawson, of Utah; Representative Thomas J. Dodd, of Connecticut; and Representative H. A. Dixon, of Utah, and a statement from the Studebaker-Packard Corp. which will be filed in the record at this time.

(The statements referred to are as follows:)

STATEMENT BY REPRESENTATIVE WILLIAM A. DAWSON (REPUBLICAN, UTAH) ON
BEHALF OF S. 3879

Mr. Chairman, I appreciate the opportunity you have given me to appear in support of this legislation.

Mr. Chairman, ordinarily I am opposed to legislation such as this which injects the Government into contracts between segments of our business society. However, in the case of the relationship between dealers and automobile producers, there is need for additional protection for the dealers. If the automobile dealer was in a position to say to the producer, "treat me fairly, or I will take my business elsewhere" this legislation would be both unnecessary and repugnant. With the concentration of our automobile production in the hands of three mammoth corporations, the dealer is completely at the mercy of his supplier. He has no bargaining power.

The legislation now under consideration does not, as I understand, throw the Government's weight on the side of the dealer. It does, however, give the automobile dealer a chance to present his case before a court if he feels he has been unfairly dealt with. When the production of any necessity—and automobiles now are necessities—becomes as centralized as the automotive industry is, it partakes of the nature of a public utility in that it must submit to some regulations in return for the near monopoly it has acquired of the market. This legislation will not hurt our producers of automobiles provided they play fair. It gives dealers a chance to be heard before they are forced under. I think it should be passed.

Mr. Chairman and gentlemen of the subcommittee, it is my sincere conviction that the enactment of the legislation being considered today, S. 3879 will be a significant step forward in freeing thousands of automobile dealers from what amounts to economic bondage.

An automobile dealership represents a substantial investment, not only in money, but also in effort. It seems obvious to me that these small-business men are entitled to the protection of the law in their relationships with manufacturers,

since under the present system they can be forced out of business almost at the whim of the supplier.

S. 3879 represents a fair and equitable attempt to bring at least a measure of security to the thousands of automobile dealers in the country. It is not intended to underwrite poor judgment on the part of the dealer in his business dealings, as has been charged by opponents of the bill. But it will give him his "day in court" if he believes that the manufacturer has treated him unjustly.

Section 1 (e), the so-called good-faith portion of the bill, seems to me an excellent way to insure that all parties in any dealer-manufacture franchise arrangement will maintain high standards of business ethics. The critics of this legislation have advanced the old argument that Government should not interfere needlessly with the conduct of private business. Unfortunately, however, the automobile industry has made little or no progress in achieving better dealer relationships and, indeed, the abuses have been increasing at an alarming rate.

Many dealers have been forced to the wall by the practice of shipping unwanted cars to them—cars that cannot be absorbed in the market because of the senseless race among some manufacturers for "first place" in sales volume. The manufacturers have sometimes totally ignored the saturation point where a dealer cannot sell the product in legitimate commerce. Consider the plight of a dealer who can sell about 20 new cars a month at a maximum who is forced to accept delivery of 25 or 30 cars. If he refuses to accept the number of cars that the district representative of the manufacturer arbitrarily sets as his quota, his dealership can be canceled on a unilateral basis.

I think, in all fairness, that any businessman is entitled to a far better break than that. Under the provisions of the bill under discussion here today, he would at least have the chance to bring suit and possibly to recover damages.

The pressure that has been brought to bear on the country's independent automobile dealers by some manufacturers to accept more cars than they can reasonably hope to sell, has resulted in a grave deterioration in marketing techniques. To avoid bankruptcy, some dealers in desperation have resorted to shoddy service work, deceptive and dishonest advertising, and the "packing" of insurance and finance charges as well as the "packing" of the prices of cars. Automobile overproduction has led unavoidably to the practice of "bootlegging," which undermines public confidence in the entire industry.

Many dealers from my own State of Connecticut have expressed the strongest possible support for the good-faith aspect of the bill. They feel that the enactment of this legislation will have a wholesome effect upon the automobile industry, lead to better dealer-manufacturer relationships, and ultimately be of benefit to our entire economy.

STATEMENT OF STUDEBAKER-PACKARD CORP.

This statement concerning H. R. 11360 and S. 3879 is submitted to the House Antitrust Subcommittee, Committee on the Judiciary, House of Representatives, on behalf of Studebaker-Packard Corp. The fact that circumstances have prevented the appearance of a corporate executive to testify in person on one of the hearing days should not suggest that the management of the corporation minimizes the importance of the proposed legislation, or fails to place a high value on the serious and able attention the subcommittee is giving the matter.

The effect of either of these bills, it is believed, would be to recast the relationship between an automobile manufacturer and dealer from the normal business relationship wherein the rights, obligations, and liabilities are fixed by contract or by law to one in which one party—the manufacturer—is subjected to liability based on an after-the-fact determination of whether it acted in "good faith" to protect and preserve undefined "equities" * * * inherent in the relationship.

We know of no business relationship in which any party may be held by *ex post facto* determination to respond in damages for failure to conform to such an unconscionably vague standard of conduct. Needless to say, the contracting agencies of the United States do not, and could not, as a practical matter, deal with contractors or suppliers of the Government on such an unusual and uncertain basis, nor do automobile dealers or sellers of any other goods so deal with their customers.

The bills are frequently referred to as dealers' "day in court" bills. Dealers, like other citizens, of course, have access to the courts. Dealers do sue auto manufacturers for claimed breaches of contract, antitrust law violations, and violations of State statutes. They do not always prevail, but in many instances

they do obtain judgments or settlements. It is undoubtedly true that in most instances the courts have enforced cancellation-on-notice clauses in automobile manufacturer-dealer contracts as in other contracts. It is true, also, that the courts have not imposed a duty on manufacturer or dealer to renew a contract which has expired by its own terms. The bills, therefore, do not grant the dealer a day in court; he already has that. The bills actually create a cause of action based on duties so vague, uncertain, and potentially onerous as to force a relationship terminable as a practical matter only by the dealer. The dealer is not bound to exercise good faith in termination or failure to renew, and no cause of action is created in favor of the manufacturer. In testimony before the Senate Subcommittee on Automobile Marketing Practices the president of Studebaker-Packard made this statement which has some relevance here:

"* * * whatever else may be true in the marketing of automobiles today, there is keen competition for dealers. Most manufacturers need additional dealers, and are actively seeking them; there is competition between auto makers for the patronage of existing dealers and potential dealers. It harms a manufacturer, and is especially damaging to a smaller manufacturer to lose a dealer; especially is this true when a dealer's reason for termination is for the purpose of dealing in a competitive brand of automobiles.

"In metropolitan centers, in particular, dealers are difficult to replace. Yet, in all of the outcry about 'unilateral contracts' and 'mutuality' I have heard no suggestion that the dealer ought to be able to terminate the contract only for cause.

"We recognize that it is not practical to attempt to hold a dealer to the contract if he no longer wishes to deal in a particular brand of automobile, and yet would this not be the essence of 'mutuality.' Is it not impractical to consider the relationship a marriage from which one, but not the other, party may withdraw?"

The bills before your subcommittee will, for reasons which are obvious, create such a relationship.

The adoption of either of the bills, we believe, would tend to create for existing dealers a sanctuary from the rigors of competition. Representatives of NADA who testified in favor of the legislation considered that appointment of a new dealer having low overhead expense might well be "bad faith" under the bill, and permit an existing dealer in the area to collect damages (record, p. 221 et seq.). Yet many existing, substantial and well-established dealers started with nominal investments. Many started in small service garages, or as used-car dealers. One witness, apparently now a substantial and respected businessman, told your subcommittee: "I started in when I was a kid and didn't have 30 cents" (record, p. 305). We would hope that it will continue to be possible for Americans with ambition, but only nominal resources, to enter this great industry and build useful and prosperous careers. A dealer of ours who is a fine gentleman, but who had a poor sales record in a prosperous city of more than 150,000 people, recently complained bitterly because a second dealer, with lesser facilities, was appointed in a community 7 miles away. This, presumably, would raise a question under the proposed legislation of good-faith protection of equities * * * inherent in the nature of the relationship.

We think the legislation would provoke dispute and litigation. It may be directed toward protecting dealers from what the chairman termed "this monolithic, duology or duopoly, that is, General Motors and Ford," but its burdens will fall most heavily upon the smaller manufacturers who are least able to expend the time, manpower, and money necessary in defense of actions which can be brought on the tenuous grounds provided for in the bills.

Failure of a manufacturer of automobiles to generate enough sales to provide for the research, engineering, styling, tooling, advertising, and so forth, will harm not only the manufacturer, but the dealer body as well. So long as the manufacturer relies primarily upon a group of independent dealers to do the retail selling job those dealers have a genuine interest in the manufacturer's efforts to replace the ineffective dealers and prevent dry rot from spreading through the dealer organization. It seems to us that a manufacturer under the proposed legislation will face a potential lawsuit every time it terminates a dealer contract or fails to renew a dealer contract. This, in itself, will have the effect of "building in" the inefficient dealer, of harming the entire dealer body, and in the long run, harming the public interest.

A question has been raised several times about the possibility of manufacturers venturing into the retail selling field. This seems unlikely so long as the manufacturer-dealer method of distribution is the most economical and effective system. Once the burdens and costs of selling through independent dealers begin to outweigh the advantages of the system it seems probable that the competitive

forces in the business will compel the manufacturers to explore other distribution techniques. We cannot consider it improbable that the burdens imposed by the type of legislation under consideration, coupled perhaps with other factors, might be sufficient to shift the balance in favor of company-owned retail outlets.

We will not burden the record with a repetition of the constitutional, special legislation, and other objections and criticisms which have been expressed concerning these bills. We believe that enactment of either of the bills would be contrary to the industry and the public interest and urge that neither of them be favorably reported or adopted.

HOUSE OF REPRESENTATIVES,
Washington, D. C., July 3, 1956.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D. C.

MY DEAR CONGRESSMAN CELLER: I ask unanimous consent to have placed in the record of the hearings on S. 3879 and H. R. 11360, the following statement:

"Mr. Elias Strong, executive vice president of the Utah Automobile Dealers Association, has provided me with letters and information over the telephone stating that his organization is 80 dealers for as opposed to 3 dealers against the O'Mahoney bill, S. 3879. He states further that a number of the dealers, especially Ford dealers, who have gone on record as against the bill have now changed their position and want the right to go into the courts with a grievance and not be precluded from that privilege by any contract."

Most respectfully yours,

H. A. DIXON, *Member of Congress.*

Mr. ROGERS. We have six witnesses scheduled and additional witnesses have asked to be heard.

The first witness will be Judge Gwynne, Chairman of the Federal Trade Commission.

Judge, will you come forward?

Mr. GWYNNE. Mr. Chairman.

Mr. ROGERS. Yes, Mr. Gwynne.

Judge, you are familiar with the letter from the Federal Trade Commission to the chairman of the committee on July 3?

Mr. GWYNNE. Yes.

Mr. ROGERS. We will put it in the record at this time.

(The letter referred to is as follows:)

FEDERAL TRADE COMMISSION,
Washington, July 3, 1956.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your letter of May 31, 1956 requesting a report upon H. R. 11360, 84th Congress, 2d session, and to the further request for comment upon S. 3879, 84th Congress, 2d session, which is also pending with your committee.

The general purpose of the proposed legislation is to permit automobile dealers to bring suit in the proper district courts of the United States, regardless of the amount in controversy, for damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

There are some differences in the two bills. H. R. 11360 provides in section 2 that:

"Any automobile manufacturer engaged in commerce who makes or grants any franchise to an automobile dealer, shall have the duty to act in good faith in all dealings or transactions with such dealer."

It is not clear whether the good faith provision is meant to apply in the actual making or granting of the franchises or only to the dealings or transactions of the parties after the franchise is granted. In other words, does the bill intend to introduce by legislative mandate the element of good faith in the actual making

of the contract or simply in the carrying out of an agreement the terms of which are left entirely to the parties.

S. 3879 does not have a similar provision and the portions of both bills which provide for the suits seem to refer only to matters occurring after the contractual arrangements are entered into.

H. R. 11360 permits recovery of twice the damages sustained, while S. 3879 permits compensatory damages only. The latter bill also contains the following provision, which does not occur in H. R. 11360:

"Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith."

Section 1 (e) of H. R. 11360 provides:

"The term 'good faith' shall mean the duty of the automobile manufacturer, its officers, employees, or agents, to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer."

A similar provision in section 1 (e) of S. 3879 has been rewritten to read as follows:

"The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee such other party freedom from coercion, intimidation, or threats of coercion or intimidation, so as to preserve all equities of such other party which are inherent in the nature of the relationship between such parties by such franchise."

There seems to be a discrepancy between the wording of the bill as attested by the Secretary of the Senate and a report of the proceedings in the Congressional Record. The latter indicates that the last clause in section 1 (e) was amended to read "so as to preserve all equities of such other party which are inherent in the nature of the relationship created between such parties by such franchise."

The printed version of the bill, as attested to have been passed, omits the word "created."

The inclusion of the word "created" in the definition of "good faith" would indicate that the equities to be protected are those which are created by the terms of the franchise. The omission of the word might indicate that the preservation of equities includes matters which may arise from the franchise relationship, separate and apart from the terms of the franchise itself.

In the remaining comment on S. 3879, it is assumed that "created" is meant to be included in section 1(e). Thus, it would seem that the bill intends only to include by congressional mandate the term "good faith" in the consideration by the court of the matters relating to the performance of the terms of the franchise or to the terminating, cancelling or not renewing of such franchise.

The proposed legislation suggests many questions as to the probable interpretation to be given by the courts, and the effects on the automobile industry generally. Comment here, however, is restricted to the probable effect the law might have in the enforcement of the laws being administered by the Federal Trade Commission.

The bills do not propose additional duties for the Federal Trade Commission, nor do they purport to be direct amendments to any laws which the Commission now enforces. Some of these laws do cover certain phases of the automobile business. For example, section 5 of the Federal Trade Commission Act prohibits unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce. This covers many phases of the relationship of manufacturers to dealers, and also of the relationship of either to the public. Concerning the hearings held by it, the Senate committee report points out:

"The evidence obtained indicated that great pressure had been exerted, at least by the dominant automobile manufacturers, upon dealers to accept automobiles, parts, accessories, and supplies which they did not need, did not want, or did not feel their market was able to absorb."

A practice of using coercion, intimidation or discrimination to induce dealers to order or accept any product has long been held to be an unfair method of competition and an unfair practice violative of section 5 of the Federal Trade Commission Act. The Commission has brought proceedings against such practices whether followed by automobile manufacturers or others. Of course, all of such proceedings by the Federal Trade Commission must have in them the element of public interest. They were designed to stop practices thought to be injurious to the public rather than to determine the question of damages to private parties for

wrongs claimed to have been done. Consequently, it is difficult to see how the enactment of S. 3879 would interfere with our work under section 5 of the Federal Trade Commission Act.

S. 3879 contains the following title :

"To supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover compensatory damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers."

The title of H. R. 11360 differs only in its reference to damages.

The phrase "To supplement the antitrust laws of the United States" would seem to indicate a possible relationship to the antitrust laws. The rest of the title and the bill generally seem to negative this inference of relationship. Both bills have to do with private suits in the Federal courts. The principal issue will be the question of "good faith" as that term may be defined by the courts. It is true suits may be imagined where the antitrust laws may be involved; but, if so, it would only be incidental.

I do not see how omission of the phrase "To supplement the antitrust laws of the United States" could damage the bills. On the other hand, such action might make it clearer that Congress had no intention of changing the basic structure or philosophy of these laws.

Mention has already been made of the omission of the word "created" in section 1 (e), which apparently was inadvertent. The word "created" tends to clarify and limit the bills and makes it clearer that the rights of both parties are to stem from the franchise contract and not from the mere fact of relationship of manufacturer and dealer. In other words, the bills do not require the inclusion or exclusion of any particular feature in the franchise. But when questions arise involving performance, or the termination, cancellation or failure to renew said franchises, trial courts are required to take into consideration the economic facts underlying the manufacturer and dealer relationship. The rights and obligations of both parties are to be tested by the yardstick of good faith much as in situations where a fiduciary relationship has been held to exist.

The bills would seem to broaden the powers of trial judges in adjudicating manufacturer-dealer problems. Courts would be allowed more discretion than they now possess. Are the powers so broadened, or is the discretion so unlimited as to permit decisions running counter to the philosophy of the antitrust laws? That, of course, is the important question so far as the Federal Trade Commission is concerned.

It is my conclusion that the proposed legislation with the amendments suggested would not substantially affect the work of the Federal Trade Commission.

The necessity and the advisability of the legislation generally are questions for the Congress rather than the Federal Trade Commission.

By direction of the Commission.

JOHN W. GWYNNE, *Chairman*.

N. B.—In view of the committee's request that the Commission expedite this matter, the report has not been cleared with the Bureau of the Budget.

Mr. ROGERS. You may proceed, Judge.

STATEMENT OF HON. JOHN W. GWYNNE, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY EARL W. KINTNER, GENERAL COUNSEL, FEDERAL TRADE COMMISSION

Mr. GWYNNE. Mr. Chairman, I have a very brief statement here. I would be glad to read it or do as you suggest.

Mr. ROGERS. You may proceed with your statement.

Mr. GWYNNE. Very well.

Mr. Chairman and gentlemen, I am appearing pursuant to the request of this subcommittee to present the views of the Federal Trade Commission in regard to H. R. 11360. The views which I will express are in accord with my letter to Chairman Celler, of July 3, 1956.

The general purpose of the proposed legislation is to permit automobile dealers to bring suit in the proper district courts of the United States, regardless of the amount in controversy, for damages sustained by reason of the failure of automobile manufacturers to act in "good faith" in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

There are some differences in the two bills. I refer to H. R. 11360 and S. 3879. H. R. 11360 provides in section 2 that :

Any automobile manufacturer engaged in commerce who makes or grants any franchise to an automobile dealer, shall have the duty to act in good faith in all dealings or transactions with such dealer.

It is not clear whether the "good faith" provision is meant to apply in the actual making or granting of the franchises or only to the dealings or transactions of the parties after the franchise is granted. In other words, does the bill intend to introduce by legislative mandate the element of "good faith" in the actual making of the contract or simply in the carrying out of an agreement the terms of which are left entirely to the parties?

S. 3879 does not have a similar provision and the portions of both bills which provide for the suits seems to refer only to matters occurring after the contractual arrangements are entered into.

Mr. MALETZ. Mr. Chairman. Judge Gwynne, would you recommend that section 2 of H. R. 11360 be stricken?

Mr. GWYNNE. You say you do recommend?

Mr. MALETZ. Would the Federal Trade Commission make such a recommendation?

Mr. GWYNNE. Well, I merely call that to your attention.

Mr. MALETZ. As you know, the Senate did strike section 2 of S. 3879.

Mr. GWYNNE. That is correct.

Mr. MALETZ. I am wondering whether the Federal Trade Commission would make a similar recommendation with respect to H. R. 11360.

Mr. GWYNNE. Well, I think it clarifies the bill, yes.

Mr. MALETZ. Thank you.

Mr. GWYNNE. H. R. 11360 permits recovery of twice the damages sustained, while S. 3879 permits compensatory damages only. The latter bill also contains the following provision, which does not occur in H. R. 11360:

Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

Section 1(e) of H. R. 11360 provides:

The term "good faith" shall mean the duty of the automobile manufacturer, its officers, employees, or agents, to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

A similar provision in section 1 (e) of S. 3879—

Mr. HARKINS. Judge Gwynne, what would be the view of the Federal Trade Commission as to amending H. R. 11360 so that in

section 1(e), the definition of the term "good faith" would read as follows:

The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof, to act in a fair, equitable, and nonarbitrary manner toward each other so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party.

Mr. GWYNNE. Well, our principal interest in the matter is the possibility of its effect on enforcement of the antitrust laws over which we have jurisdiction. We certainly would have no objection to that amendment, naturally.

Mr. HARKINS. That amendment would strike out the language concerning protecting the equities of the automobile dealers that is now in the bill?

Mr. GWYNNE. Right.

Mr. HARKINS. And the Federal Trade Commission would be in favor of such amendment?

Mr. GWYNNE. Well, we certainly would have no objection to it.

Mr. HARKINS. Thank you.

Mr. GWYNNE. There seems to be a discrepancy between the wording of the bill as attested by the Secretary of the Senate and a report of the proceedings in the Congressional Record. The latter indicates that the last clause in section 1(e) was amended to read:

so as to preserve all equities of such other party which are inherent in the nature of the relationship created between such parties by such franchise.

The printed version of the bill, as attested to have been passed, omits the word "created."

Mr. MALETZ. Judge Gwynne, we have checked on this omission in the printed version of the bill, and have been informed that the printed version of the bill is in error in that respect. The word "created" should have been in the printed version. The amendment that was suggested would take out that clause in any event.

Mr. GWYNNE. We rather assumed that that was an inadvertent error in copying.

Mr. MALETZ. There is another error, Judge Gwynne, which I take it the staff of the Commission has discovered, a typographical error in all probability, on page 2 of 11360, line 10, the last word, "agreement," should be "arrangement."

Mr. GWYNNE. You mean it was "arrangement" the way it passed the Senate?

Mr. MALETZ. It was "agreement" the way it passed the Senate and there was an error in that respect also.

Mr. GWYNNE. The word should be "arrangement"?

Mr. MALETZ. Yes, sir.

Mr. GWYNNE. In view of the fact that "created" is recognized as being in the bill, I can omit a few paragraphs where I comment on that.

Going on, the proposed legislation suggests many questions as to the probable interpretation to be given by the courts, and the effects on the automobile industry generally. Comment here, however, is restricted to the probable effect the law might have in the enforcement of the laws being administered by the Federal Trade Commission.

The bills do not propose additional duties for the Federal Trade Commission, nor do they purport to be direct amendments to any laws which the Commission now enforces. Some of these laws do cover certain phases of the automobile business.

For example, section 5 of the Federal Trade Commission Act prohibits unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce. This covers many phases of the relationship of manufacturers to dealers, and also of the relationship of either to the public. Concerning the hearings held by it, the Senate committee report points out:

The evidence obtained indicated that great pressure had been exerted, at least by the dominant automobile manufacturers, upon dealers to accept automobiles, parts, accessories, and supplies which they did not need, did not want, or did not feel their market was able to absorb.

A practice of using coercion, intimidation, or discrimination to induce dealers to order or accept any product has long been held to be an unfair method of competition and an unfair practice violative of section 5 of the Federal Trade Commission Act.

The Commission has brought proceedings against such practices whether followed by automobile manufacturers or others. Of course, all of such proceedings by the Federal Trade Commission must have in them the element of public interest.

They were designed to stop practices thought to be injurious to the public rather than to determine the question of damages to private parties for wrongs claimed to have been done. Consequently, it is difficult to see how the enactment of S. 3879 would interfere with our work under section 5 of the Federal Trade Commission Act.

Mr. ROGERS. Judge, may I interrupt you there?

Have there been many complaints filed with the Commission under section 5 of the Federal Trade Commission Act?

Mr. GWYNNE. You mean recently?

We brought a case at one time, had an order, you know, against one company based on violation of section 5, the general claim being that dealers were required as a condition to getting shipments of cars, to buy certain accessories, and so on.

How long ago was that, Mr. Kintner? You had that order.

Mr. KINTNER. It is the old General Motors order, Mr. Chairman, of the Federal Trade Commission, which has been intermittently and almost continuously investigated for compliance. There have been in recent years, as I understand it, relatively few complaints filed of this character, that is informal complaints.

Mr. ROGERS. I take it, you have had very few complaints filed?

Mr. KINTNER. Informal complaints filed, and no proceedings, by the Federal Trade Commission in this area.

Mr. ROGERS. I take it from that answer you have not had any complaints by dealers that the manufacturers may require them to take more automobiles than they can absorb in the market?

Would that come under section 5?

Mr. KINTNER. No; that would not, sir.

Mr. ROGERS. It would not?

Mr. KINTNER. But we do not have many complaints by dealers, for rather obvious reasons.

Mr. ROGERS. In other words, you have not had any?

Mr. KINTNER. That is right, sir. We have looked into certain situations that developed in the course of testimony here in Congress before various committees of the Congress, but we find the dealers somewhat reluctant to testify on the record concerning their complaints.

Mr. McCULLOCH. Mr. Chairman, I would like to ask this question. Notwithstanding the reluctance of dealers to testify concerning their grievances, have you promptly investigated informal complaints?

Mr. KINTNER. Yes, sir; we have.

Mr. McCULLOCH. And is it possible to get from dealers off the record factual answers concerning such complaints?

Mr. KINTNER. Sometimes it is, Mr. McCulloch. I would qualify my answer to you to this extent: that the Department of Justice has for some time had a pending general investigation of the automobile industry, has under way pending general investigation of the automobile industry, and we have not conducted such investigation at the Federal Trade Commission because of our desire not to duplicate the work of the Department.

We have, however, made prompt investigation of any indication of the violation of the old General Motors order, and we have made various investigations into the accessory part of the industry.

Mr. McCULLOCH. I would also like to ask this question, Mr. Chairman.

In view of the fact that the Commission or responsible officials of the Commission may think that there is reluctance on the part of dealers to testify concerning their grievances, I presume that you have tried to meet that condition by talking with and seeking evidence from people who were dealers in the past who no longer would be fearful of reprisals; is that right?

Mr. KINTNER. We have, sir.

Mr. McCULLOCH. And you have exploited it to its fullest extent and to its fullest possibility?

Mr. KINTNER. Yes, sir. That is my understanding.

Mr. ROGERS. Do I understand that you do have an arrangement with the Antitrust Division of the Department of Justice whereby they handle one phase of this matter and the Federal Trade Commission another? Was that your testimony a moment ago?

Mr. KINTNER. Yes, sir. We have always had a liaison arrangement with the Department of Justice so that there will be no duplication of investigation and where one agency has under progress a general industrywide investigation, the other does not undertake an investigation at that time.

Mr. ROGERS. It is my understanding that pursuant to that liaison between the two departments, the Justice Department investigates complaints by dealers that they have been coerced to take more automobiles than necessary, is that right? Was that handled by Justice and not FTC?

Mr. KINTNER. I so understand, except that with respect to our outstanding General Motors order, the Commission has had intermittently during the past 3 years a field investigation to determine whether or not that order is being violated.

Mr. ROGERS. You may proceed, Judge.

Mr. GWYNNE. S. 3879 contains the following title:

To supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover compensatory damage sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

The title of H. R. 11360 differs only in its reference to damages.

The phrase "To supplement the antitrust laws of the United States" would seem to indicate a possible relationship to the antitrust laws. The rest of the title and the bill generally seem to negative this inference of relationship. Both bills have to do with private suits in the Federal courts. The principal issue will be the question of "good faith" as that term may be defined by the courts. It is true suits may be imagined where the antitrust laws may be involved; but if so, it would only be incidental.

I do not see how omission of the phrase "To supplement the antitrust laws of the United States" could damage the bills. On the other hand, such action might make it clearer that Congress had no intention of changing the basic structure or philosophy of these laws.

Mention has already been made of the omission of the word "created" in section 1 (e), which apparently was inadvertent. And now you assure me it is. The word "created" tends to clarify and limit the bills and makes it clearer that the rights of both parties are to stem from the franchise contract and not from the mere fact of relationship of manufacturer and dealer.

In other words, the bills do not require the inclusion or exclusion of any particular feature in the franchise. But when questions arise involving performance, or the termination, cancellation or failure to renew said franchises, trial courts are required to take into consideration the economic facts underlying the manufacturer and dealer relationship. The rights and obligations of both parties are to be tested by the yardstick of good faith much as in situations where a fiduciary relationship has been held to exist.

The bills would seem to broaden the powers of trial judges in adjudicating manufacturer-dealer problems. Courts would be allowed more discretion than they now possess. Are the powers so broadened, or is the discretion so unlimited as to permit decisions running counter to the philosophy of the antitrust laws? That, of course, is the important question so far as the Federal Trade Commission is concerned.

It is my conclusion that the proposed legislation with the amendments suggested would not substantially affect the work of the Federal Trade Commission.

The necessity and the advisability of the legislation generally are questions for the Congress rather than the Federal Trade Commission.

That concludes my statement, Mr. Chairman.

Mr. ROGERS. Thank you, Judge. We appreciate your coming up and giving us your views.

The next witness will be Mr. Robert Bicks, of the Department of Justice.

STATEMENT OF ROBERT A. BICKS, LEGAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE ANTITRUST DIVISION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY VICTOR H. KRAMER, CHIEF, GENERAL LITIGATION SECTION, ANTI-TRUST DIVISION

Mr. BICKS. Mr. Chairman, I appear today in response to your chairman's request for this Department's views on H. R. 11360 as well as its Senate passed companion S. 3879. These proposals aim—

to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover—

according to the bills as introduced, "twofold," and according to the Senate-passed bill, "compensatory"—

damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

Effectuating this broad purpose—and I just quoted from the preamble of the bills—"section 3" of the bills as introduced, renumbered "section 2" in the Senate-passed bill, provides "an automobile dealer" may sue "any automobile manufacturer" in Federal Court for damages, plus cost of suit and attorney fees—

sustained * * * by reason of the failure of said automobile manufacturer to act in good faith and in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer.

To this language the Senate-passed bill adds the proviso, according to the Senate bill's sponsor, already implicit in the bills as introduced—

that in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

Finally, section 1 (e) of the bills as introduced defines "good faith" as

* * * the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer.

On the Senate floor this language was broadened to include within "good faith" a "duty," not only on the manufacturer, but on "each party to any franchise." Correspondingly, relevant "equities" were extended to cover not only "equities of the automobile dealer" but of any "other party" as determined by "such franchise."

The term "franchise," however, goes beyond the written "agreement" or "contract." Included as well is any "understanding or arrangement"—and let me underscore "understanding or arrangement"—"between any automobile manufacturer and any automobile dealer which purports to fix the legal rights and liabilities of the parties * * *." So much for a sketch of the bills' provisions.

Commenting on these proposals, my plan is, first, to touch on three basic policy issues, now facing this committee, that these proposals raise. These broad issues aside, I shall, second, analyze the language

of these proposals, as well as amendments before this committee to gage their effects on our common goal of assuring free competition in the distribution and sale of motorcars.

I. At the outset, H. R. 11360 and the Senate-passed bill pose at least three basic issues for Congress to decide. First, as Chairman Celler put it in his statement opening hearings on this bill:

Implicit in these measures is the premise that in the automobile industry concentration of economic power among the manufacturers has proceeded to the point where the ordinary rules of contract law are no longer adequate for the protection of the dealers or the public.

Second, this premise, in turn, assumes that problems faced by auto dealers differ sufficiently from problems of, for example, farm machinery, "white goods," electrical appliance, and if you will, independent gasoline dealers or independent tire dealers, to warrant the special treatment these measures propose. Finally, again in the language of your chairman:

There is also the premise that enforcement of the antitrust laws has not adequately coped with this situation.

Treating these issues, I realize that under our system of representative government, such questions are for Congress—and not this Department—to initially resolve. However, as Chairman Celler stated in opening these hearings:

* * * the committee has invited interested parties, representing all points of view, to testify. The Chair wishes to state that this subcommittee will consider the evidence presented here most carefully indeed, and based on that consideration, will make expeditious recommendations on the pending measures * * *.

With this invitation in mind, I raise certain questions which may aid your consideration.

First, as your chairman suggested, these proposals alter "ordinary rules of contract law" by imposing on parties to existing contracts obligations beyond those for which they contracted. As Congressman McCulloch asked Senator O'Mahoney, before this committee July 2, 1956:

* * * Won't the remedy which is proposed in the legislation affect the contracts or the franchises or the agreements which have been heretofore entered into?

In reply, Senator O'Mahoney said:

Now I have no question in my mind at all about the correctness of the general statement that you have made.

Senator O'Mahoney went on to emphasize, however, that the bill would enable suit only "for acts to be committed in the future."

As applied to future acts under existing franchises, then, this bill would apparently alter the agreed-upon obligations of the parties. As the Senate committee report on S. 3879 put it, this bill—

imposes a duty of good faith in certain situations upon the manufacturer *in addition to any obligations existing under the franchise.* [Italic added.]

And that report goes on—

this right to court review will exist *irrespective of current franchise provisions to the contrary.* [Italic added.]

Finally, the Senate report concludes:

A wholly new right of action is created by this bill in enabling a dealer to bring suit to test the good faith of a manufacturer * * * [Italic added.]

Despite this effect on existing contracts, the Senate-passed bill, if enacted, might well be held constitutional. For, as the Supreme Court early held—

* * * the power to prescribe the rule by which commerce is to be governed * * * like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution.

Exercising that power, the law is equally well settled, Congress has—

authority to resort to all means * * * appropriate and plainly adapted to the permitted end * * *.

Considering whether particular statutes are “appropriate and plainly adapted to the permitted end,” the Court has upheld enactments with far-reaching effects on existing rights.

And I emphasize “before” the enabling legislation was passed.

As the Court there reasoned:

Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from Federal regulation is not gained through forehanded contracts. Were it otherwise the paramount powers of Congress could be nullified by “prophetic discernment.”

Mr. MALETZ. Mr. Bicks, is it the view of the Department of Justice that there is no constitutional objection to the pending measure?

Mr. BICKS. By the pending measure I assume you mean the Senate passed bill providing for compensatory damages and creating a right of action only for acts committed after its passage.

Mr. MALETZ. That is correct.

Mr. BICKS. Based on existing precedent my own view is that it would be held constitutional.

Mr. ROGERS. What would be your thought where some States have—

Mr. BICKS. That is a little different problem.

As you know, article I, section 10, of the Constitution bars the States and the States only, according to one Supreme Court decision, from impairing contract obligations.

The bar on the Federal Government, in contract, stems from the fifth amendment's due process clause.

Mr. ROGERS. Suppose you have a State statute, and there have been a few passed, including one in my own State—not exactly like the present bill but in effect providing that before one of these franchises can be canceled you must get court approval.

Now, if we pass this legislation, would that give exclusive jurisdiction to the Federal Government and take jurisdiction away from a State? If we assert our right in the interstate commerce field, as we attempt to do here, would that give exclusive jurisdiction to the Federal Government and would the rights acquired under the State statute, go out the window?

Mr. BICKS. Mr. Chairman, the answer to that would of course depend on the intent of Congress in passing this statute.

I am sure you have in mind some of the recent decisions where Federal legislation has been held to preempt the field.

That is a problem you could deal with specifically now. You might specifically put in a saving clause for State statute.

Mr. KEATING. Right in this statute?

Mr. BICKS. Yes. There is none now of course. The answer to that question depends on what you gentlemen intend. And you are making clear that intention right now.

Mr. ROGERS. But you feel if we do not put something in, that there might be some right under State law that we would preempt?

Mr. BICKS. Well, if you don't put anything in, the question will arise.

I don't know how a court might decide it, but you may avoid any question by including some specific savings clause.

Mr. KEATING. I think we should put something in. This does not appear to me to be an area where the Federal Government should have exclusive jurisdiction.

Mr. BICKS. From Congress' power to pass this bill, however, the wisdom of its exercise by no means follows.

I would like to make that point clear. I have been dealing thus far with Congress' constitutional power to pass the bill.

However the question of wisdom, I suggest, turns in part at least on, first, the extent auto dealers' lot in fact differs from other independent businessmen's, and second, whether as the chairman stated in his opening statement, Congress is ready to conclude that a free market, buttressed by antitrust, "has not adequately coped with this situation" and cannot do so.

This bill assumes that auto dealers, as the result of their weak bargaining position vis-a-vis auto manufacturers, have suffered.

Any rational comparison of auto dealers' bargaining power with other independent retailers' strength would require a broad inquiry into retailing generally.

Investigation thus far, however, has focused largely on auto dealers. True, as Senator O'Mahoney pointed out, Congress may decide to legislate, first, for auto dealers, and later, consider other retailing sectors. To the wisdom of such a step, however, the following figures may be relevant.

Roughly one-half, or 20,000, of the 40,000 franchised automobile dealers are franchised by General Motors Corp. In 1953, according to statistics before the Senate Antitrust Subcommittee, these dealers averaged a 14 percent return on net worth—after taxes.

In 1954, this average return dropped to 9 percent; but, our research reveals, for the year 1955 this average return jumped back up to 13.81 percent—again I emphasize—after taxes.

Mr. MALETZ. Mr. Bicks, do you have any figures showing the profits of General Motors based on net worth after taxes?

Mr. BICKS. I do not.

Mr. MALETZ. For the corresponding period?

Mr. BICKS. But with due deference may I suggest those are not relevant to our inquiry now.

I introduced these figures of dealers' profits not to suggest they are too high or too low but merely to compare them with other sectors of retailing, not with other manufacturers.

Mr. MALETZ. Do you have any figures indicating profits of Ford dealers?

Mr. BICKS. I do not.

Mr. MALETZ. Based on net worth after taxes?

Mr. BICKS. I do not.

Mr. MALETZ. These figures that you have set forth would not indicate, would they, that the General Motors' dealers have a strong bargaining position vis-a-vis General Motors?

Mr. BICKS. You are absolutely right. I merely introduce them now to aid your consideration in appraising just how auto dealers have fared in relation to other sectors of retailing. I would think that would be relevant to your inquiry about special legislation for auto dealers.

Comparison of these General Motors dealer returns with other retailers' requires at least two caveats. Initially, Ford, Chrysler, American Motors and Packard-Studebaker dealers may have fared differently from their brethren affiliated with General Motors.

How do you, sir?

The CHAIRMAN (presiding). Proceed.

Mr. BICKS. May I go on?

The CHAIRMAN. I am sorry I missed a portion of your statement. I understand it has quoted me, and I am sure that meets with my approval.

Mr. BICKS. Mr. Chairman, I began by stating some of the initial premises that this bill assumes. Treating them, I state at the outset that they are problems for Congress initially to decide, and not this Department.

I treated first the extent to which I believe they alter existing contracts. I suggest that the bill as passed by the Senate, limited to future acts, might well be held constitutional. Having treated the question of Congress' power to pass the bill, I now raise certain questions which Congress may wish to decide in considering whether it is wise to do so.

I am setting forth for your record certain figures on dealers' profits and attempting to compare them with other sectors of retailing.

Comparison of these General Motors dealer returns with other retailers' requires at least two caveats. Initially Ford, Chrysler, American Motors and Packard-Studebaker dealers may have fared differently from their brethren affiliated with General Motors. Beyond that, even assuming GM dealer returns fairly represent all auto-dealer profits, these may be relevantly compared only with returns of other independent retailers that face risks comparable to auto dealers.

With these cautions uppermost, consider returns earned, for example, by farm equipment dealers for 1955. During 1955, recall, GM dealers earned 13.81 percent on net worth—after taxes. Farm-equipment dealers, in contrast, averaged some 10.6 percent on net worth—before taxes. Thus, for 1955, GM dealers, after taxes, earned 3 percent more on their investment than farm-equipment dealers before taxes.

I choose this farm equipment example first because they are statistics that are readily available, and second, they have roughly a bargaining position vis-a-vis manufacturers that may be comparable to the dealers.

Return figures for independent retailing generally are not now readily available past 1954. GM dealers' 9 percent return for that year, recall, was the lowest since World War II. However, even for 1954, these auto-dealer returns, according to a Dun & Bradstreet survey, far

surpassed 11 of the 12 other retailing lines surveyed. For your record, I submit a summary of that survey's findings.

(The document referred to is as follows:)

Profit ratios of retailers

Line of business	Net profit ¹ to net sales		Net profit ¹ to tangible net worth	
	1954	1950-54 average	1954	1950-54 average
	Percent	Percent	Percent	Percent
Hardware.....	2.84	(²)	5.94	(²)
Lumber and building materials.....	1.98	2.72	6.92	8.22
Furniture.....	1.38	3.15	3.58	6.80
Furniture, installment.....	2.24	3.60	4.26	6.78
Clothing, men's and boy's.....	2.69	3.28	5.66	7.19
Clothing, men's and women's.....	2.30	(²)	5.29	(²)
Department stores.....	2.17	2.58	5.44	7.28
Dry goods.....	3.83	(²)	7.68	(²)
Furnishings, men's.....	1.84	(²)	4.72	(²)
Groceries and meats, independent.....	1.15	(²)	12.11	(²)
Shoes.....	1.97	2.14	5.69	7.16
Women's specialty shops.....	2.37	2.56	6.86	7.24

¹ Profits after taxes. The percentages shown are median figures, with the number of companies in each group ranging from 49 (hardware) to 392 (department stores). Concerns included are those having a tangible net worth of \$75,000 or more, which means that they come from the top 8.4 percent of industrial and commercial concerns as measured by size of investment.

² Not available.

Source: Diversification in Business Activity, Dun and Bradstreet, Inc., 1956, pp. 48-49, 74-75.

These figures are offered not to suggest that auto dealer profits are too high or too low, but merely to highlight their relation to other sectors of retailing—a relation crucial to this committee's decision on the pending bill. Nor am I unaware that, despite any profit ratios, the vast disparity in size between any auto manufacturer and any single dealer offers manufacturers the opportunity for abuse. As a result, this Department has been particularly alert to abuses in the manufacturer-dealer relationship.

The pending bill's final assumption, however, is that, antitrust enforcement, no matter how alert, cannot remedy this power disparity. Appraising this premise, most relevant are steps this Department has taken.

The basic problem, as the Attorney General has indicated—and indeed I suggest the chairman agrees, from his opening statement—stems from the growing pattern of auto-industry concentration. Since World War II, auto-industry production has been increasingly concentrated among the three majors, principally General Motors. And once-hoped-for competition from independent producers has become more remote. In 1946, for example, GM produced 46 percent of all passenger cars. By 1954, GM's share jumped to 52 percent. In that year, Ford produced about 31 percent, Chrysler about 13, and the remaining 3 independents about 4 percent. Since that time, however, GM has jumped even further. Figures thus far for 1956 suggest that GM now produces more than 55 percent of all passenger cars in this country. Moreover, if GM's share is calculated not by number of cars produced but by dollar volume, their share would be even higher. Finally, as you all know, Packard-Studebaker's condition has worsened.

Mr. KEATING. What percentage of bus production does General Motors have?

Mr. KRAMER. 85.

Mr. BICKS. That is, as you know, a matter which is right at this moment in dispute. According to our complaint, it is 85 percent.

Mr. KEATING. I would not want to ask you anything about a pending suit which would embarrass the Department.

Mr. BICKS. It would not embarrass us at all.

Mr. KEATING. That is a matter of record, I assume.

Mr. BICKS. Yes; 85 percent.

Mr. KEATING. 85 percent.

Mr. BICKS. And apparently GM does not deny that at all.

The CHAIRMAN. Mr. Bicks, what is your Department doing about the great concentration of passenger car manufacturing, with 55 percent presently lodged in GM?

Mr. BICKS. The good chairman anticipates the very next paragraph of my statement.

With this situation in mind, more than 2 years ago Attorney General Brownell announced this Department sought "the explanation of the developing pattern of concentration in the auto industry." Since that time, at his direction, this Department has continuously scrutinized auto industry developments. In point of fact, auto company and television problems now occupy a large portion of our general litigation section's resources.

As I am sure you know and realize, any investigation of General Motors' car production would be one, and is one, of great size and complexity. There are very many interesting legal problems that such an investigation has already posed and would pose were it to result in suit.

Mr. KEATING. You have actually filed a suit; have you not?

Mr. BICKS. Yes. We have actually filed a suit against GM involving that company's bus operations. But as I understand it, the chairman's question was directed to passenger cars, was it not? You were asking about passenger cars?

The CHAIRMAN. Yes. I asked what the Department was doing concerning the concentration of passenger car manufacturing?

Mr. BICKS. As you know, you are either investigating or you are suing. We have not reached the point where we have sued.

That does not mean that we have not investigated the problem. It does not mean that we may not reach that point. We have not as yet.

The CHAIRMAN. Now may I ask, what is the percentage of the manufacturing of diesel engines in the hands of General Motors now?

Mr. BICKS. I could not give you a flat statement of that.

The CHAIRMAN. It would be over 55 percent?

Mr. BICKS. I would think so, yes.

The CHAIRMAN. Is it over 75 percent?

Mr. BICKS. It depends, really, on what kind of diesels, I think. For locomotives, it is way over 75 percent. You are right.

Such inquiry it seems clear requires an investigation of great magnitude. As a result, this Department must proceed aware of the limitations of our resources. Should, as a result of our investigation, we conclude that any violation of the antitrust laws has occurred, prosecution will result.

Mr. MALETZ. Mr. Chairman, I would like to ask this question. Is the Department of Justice presently conducting an investigation of the concentration of passenger-car production by General Motors?

Mr. BICKS. By an "investigation," what do you mean?

Mr. MALETZ. Well, what do you mean by an "investigation"?

Mr. BICKS. By what I mean by an "investigation," I would say, yes.

Mr. MALETZ. What do you mean by an "investigation"?

Mr. BICKS. What I mean is using whatever staff we have as well as the staffs that are available to us to get facts about industry production.

If what you mean is, has a grand jury been assembled; No.

Mr. MALETZ. Is the Department of Justice now conducting a full-scale investigation of General Motors' production and distribution of passenger-car automobiles?

Mr. BICKS. By your question, you do not mean to imply General Motors as distinct from all other companies in the passenger-car field?

Mr. MALETZ. I am talking about the general passenger-car market.

Mr. BICKS. Absolutely. I would say "Yes."

Mr. MALETZ. A full-scale investigation at the present time?

Mr. BICKS. The difficulty that I have is with your words "full scale." I would think an investigation of passenger-car production could very easily occupy every single lawyer in the Antitrust Division. That is not being done.

Mr. MALETZ. Are you making a general inquiry at the present time or an investigation with a possibility of suit?

Mr. BICKS. Well, we do not make inquiries in the abstract without any possibility of suit.

Mr. McCULLOCH. Could I ask this question, which will clear up this field at least for me a bit?

Are you making such studies or investigations to determine to your satisfaction whether or not there are any violations of the antitrust laws of America?

Mr. BICKS. Yes.

Mr. McCULLOCH. I do not take it from the answers that you have given to counsel that you make a full scale, general investigation of the economic policies and concentration of power in any industry unless there is a possible violation of law; is that right?

Mr. BICKS. You are absolutely right. Congress has not delegated to this Department the decision to decide what is wise or unwise economically. We are given the antitrust laws to enforce.

Mr. McCULLOCH. Anything more is a particular duty and responsibility of the Congress; is it not?

Mr. BICKS. Yes.

Counsel, I would like to give you as precise an answer as I can to your question. My difficulty stems from the use of your expression "full scale." As I have indicated, an investigation of the auto car production might take every lawyer we have. We have not done that. I have tried to give you as accurate a picture as to how many men are working on it as I can.

Mr. MALETZ. Would you care to tell the committee how many people you have working on this investigation?

Mr. BICKS. I cannot give you the exact number. The most accurate characterization I can give you is a large portion of the staff of our General Litigation Section.

Mr. Kramer is the chief of that section. I think auto company and television problems together occupy over 25 percent of his sections resources.

Mr. McCULLOCH. Do you need additional personnel in that particular section of the Department of Justice?

Mr. BICKS. That would be a question I am afraid I would have to leave to the Attorney General.

Mr. ROGERS. I was interested in your statement that Congress has a duty and responsibility as to the economy of the country, and of course, you have the duty and responsibility of enforcing legislation, that is, as it relates to antitrust.

Mr. BICKS. That is right.

Mr. ROGERS. Now, do I understand that where one group in an industry gets control of more than 50 percent of production, for example, in the passenger-car field, does that fact, in itself, indicate that there is a violation of the Sherman antitrust law?

Mr. BICKS. Your question, of course, relates to the significance of size to the offense of monopolization under section 2 of the Sherman Act. The essential ingredients of that offense, as defined by the Supreme Court in the Griffith and Schine cases, reiterating Judge Hand's opinion in *Alcoa*, are, first, that monopoly power exists when one company or several companies acting in combination have the power to exclude competitors or fix prices. Also, integral to the offense of monopolization is some limited ingredient of intent to exercise that power.

I could speculate with you for some time as to what those general words mean as applied to the auto industry. For example, would General Motors have to have the power to exclude all competitors, or only 1, or only 2? Would they have to have that power, first, to meet the legal prerequisites of monopoly, and second, from the more practical point of view of whether we could win a suit in court?

Mr. ROGERS. Let's assume that they have the power to do that.

Mr. BICKS. You would be willing to assume that General Motors now has the power to drive Ford out of business?

Mr. ROGERS. Let's assume that they have, as you indicate in your statement here, approximately 55 percent of the passenger automobiles. Now would that be a power sufficient within itself, or must there be other elements involved?

Mr. BICKS. If you mean, does a 55-percent figure in all markets in all industries carry with it the power to monopolize, I don't think you could make that blanket statement. The significance of size varies in the context of every particular market. On the other hand, if you mean, must General Motors have already driven its competitors out before they violate section 2, the answer is "No." We must merely show that they have the power to drive the competitors out, plus a limited ingredient of intent to exercise that power.

Mr. ROGERS. Thank you, sir.

Mr. BICKS. More specifically, investigation of many particular abuses this bill seeks to remedy has long been underway. As the Senate report put it:

The evidence obtained indicated that great pressure had been exerted, at least by the dominant automobile manufacturers, upon dealers to accept automobiles, parts, accessories, and supplies which they did not need, did not want, or did not feel their market was able to absorb.

Before the Senate held its hearings, however, this Department received complaints that the Ford Motor Co. required its dealers to handle exclusively, or at least to sell a specified quota of, parts, accessories, and tools made or approved by Ford.

In 1953, the Attorney General obtained voluntary access to Ford Motor Co. files. And representatives of this Department have examined the files of many, many Ford dealers. This examination has been conducted not only in Detroit but in various Ford offices throughout the country. In the course of this investigation more than 10,000 Ford documents have been copied by our investigators.

This survey sprang from persistent complaints not only from Ford dealers but also from independent manufacturers and jobbers of parts and accessories that Ford required its dealers to do business only with the Ford Co. According to the complainants, independent manufacturers and jobbers of parts and accessories were thus excluded from access to the thousands of retail outlets represented by Ford dealers.

This complaint the Ford Motor Co. has flatly denied. It could not deny that prior to 1949 it required its dealers by contract to handle exclusively Ford parts and accessories. However, in 1949 Ford changed its dealer contracts by removing the express exclusive dealing requirement. And Ford insists that it has a right to take all reasonable steps to see to it that its dealers do not palm off as genuine Ford parts items that are in fact not made or approved by Ford. Ford also insists that it has a right to insist that its dealers adequately represent it as merchandisers of its parts and accessories. Ford maintains that it has done no more than this.

We have almost completed evaluating the mass of material our investigators have collected. On the one hand, we may have to conduct even more investigation in this area. On the other, the material already gathered may suggest violation. If the Attorney General concludes that, despite dealer contract revisions, violations have occurred, in accord with his responsibility to enforce the law, suit will follow.

It is against the background of what antitrust can do in this area that this committee must appraise the assumptions that this bill premises.

Mr. QUIGLEY. Mr. Chairman, could I ask a question there?

That is a specific investigation that the Department has been conducting for the last 3 years into the operations of the Ford Co.?

Mr. BICKS. That is right.

Mr. QUIGLEY. Now, is there any comparable investigation going on in relation to General Motors?

Mr. BICKS. That is a very good question. There is not, and the reason is very simple. Mr. Kintner explained to you that the Federal Trade Commission now has General Motors under a decree covering many of these same problems. Our feeling was that we would rather investigate a company that was not under a Federal Trade Commission decree for these practices, first, at least, than a company that was under a Federal Trade Commission decree.

Mr. QUIGLEY. Now, when you answered in relation to Mr. McCulloch's and counsel's questions about the investigation that was presently being made by your Department in regard to General Motors, was it in contrast to the other investigation you have just outlined?

Mr. BICKS. Well, the Ford investigation deals principally with the relation between Ford and its dealers in regard to the forcing of Ford parts, replacement parts, as distinct from the other independent manufacturers' parts. Our survey of General Motors' operations, in contrast, focuses largely on the concentration and the production market, and only indirectly on the relation to parts distribution.

Mr. QUIGLEY. When did that investigation begin?

Mr. BICKS. Of General Motors?

Mr. QUIGLEY. Yes.

Mr. BICKS. The Attorney General announced it more than 2 years ago.

Mr. QUIGLEY. Two years ago?

Mr. BICKS. That is right.

Mr. QUIGLEY. And is there any particular member of the staff in charge?

Mr. BICKS. The member of the staff in charge of it is sitting on my left. Of course, he has been working under the direction of the Assistant Attorney General.

Mr. McCULLOCH. I would like to ask this question.

Do you find reluctance on the part of every dealer to furnish the factual information that you are seeking?

Mr. BICKS. You have two separate problems, Congressman. First, reluctance to furnish the factual information in the sense of testifying in court, of course. As a result, second, we have had to rely primarily on canceled dealers.

Mr. McCULLOCH. You get the cooperation of canceled dealers, I presume.

Mr. BICKS. Yes, you get more than cooperation, really.

Mr. McCULLOCH. Do you think you are able to get all of the information or a reasonable amount of information needed to lead you to a proper conclusion in this particular field that we are talking about?

Mr. BICKS. I can assure you that the Attorney General would not act until he was satisfied that he had enough information to warrant a rational conclusion.

Mr. McCULLOCH. And you are not at this time in a position to tell us whether or not Ford or General Motors or Chrysler have been failing to act in a fair, equitable, nonarbitrary manner in these fields.

Mr. BICKS. That is difficult to answer because we have not been investigating whether they act in a fair, equitable or nonarbitrary manner. We have simply been investigating whether they have violated the existing antitrust laws.

Mr. McCULLOCH. Have you come to a conclusion on whether or not they have violated any antitrust laws or rules or orders pursuant thereto?

Mr. BICKS. We have not.

These general policy issues aside, I turn to the specific language of H. R. 11360, the Senate-passed bill, as well as amendments which, I understand from the committee staff, this committee now considers.

Analyzing these proposals I treat, their effect, first on so-called "bootlegging," and second, on manufacturers' ability to locate new dealers and gear production, not to safeguard dealers' profits, but to meet market demand.

What I have done really is finish with the basic issues that you have got to decide.

First, do you want to modify existing contracts; second, if you do, do you want to do it only for auto dealers as distinct from other retailers, and third, is this committee ready to assume that the antitrust laws, buttressing a free market cannot do the job?

These policy issues aside, I turn to the language of the particular bill and the amendments before you and try to help your consideration of what possible anticompetitive effect they may have.

First, bootlegging. Here some definition of terms may be helpful. "Bootlegging" is oftentimes used to describe the sale by franchised dealers of new automobiles to used-car dealers for resale to consumers.

Development of this practice stems from postwar auto industry changes. From the end of World War II until 1953 the auto industry worked to fill the backlog of demand which had accumulated during World War II as well as to meet unanticipated postwar expansion in demand. During that period of time, new-car prices were relatively firm.

Beginning in late 1953, inventories of new cars in dealers' hands began to mount. This mounting inventory tied up substantial amounts of dealer capital. As a result, many dealers as a matter of sound business sought to reduce their investments in inventories. And so the era of "blitz sales" and so-called "bootlegging" began.

Notwithstanding the difficult position of some dealers, factory production continued at record levels. So many dealers faced the choice of termination or accepting automobiles in excess of their retail business requirements.

Mr. KEATING. In other words, if they did not sell a certain number of cars, and take them off the hands of the manufacturer, they faced a loss of their franchise?

Mr. BICKS. Absolutely.

Mr. KEATING. They had to sell those cars?

Mr. BICKS. That is right.

The CHAIRMAN. Would the Department consider any attempt on the part of the manufacturers to stamp out bootlegging to be a violation of the antitrust laws?

Mr. BICKS. We would, and have so advised the manufacturers.

Many dealers chose the latter course and sought new outlets for the inventory which they were unable to move through retail channels.

Another factor which encouraged sales of new cars by franchised dealers to used car dealers was the manufacturers' practice of adding a "delivery charge" to the f. o. b. price of the new car. The delivery charge has been based on the assumption, generally contrary to the fact, that the car was shipped from a single basing point which was, in most cases, Detroit.

The delivery charges in 1953 were at levels which made it possible to purchase a car in Detroit and drive it or tow it to distant points such as the west coast at a very substantial saving over the delivered price of the car in those areas.

Neither drive-away nor tow-bar transportation of automobiles is new to the automobile industry.

To the extent such transportation has not involved misrepresentation or fraud on purchasers, it is a form of competition which is entitled to its test in the market place.

Charges that in some cases speedometers have been disconnected and damaged cars have been sold as new cars, of course, warrant full prosecution under existing local laws relating to fraud and deceit.

This type of transportation responded, however, to some very simple laws of economics. It may be cheaper, under existing manufacturer-established delivery charges, to drive a car from Detroit to many areas of the country than to pay the manufacturer's delivery charge.

So long as this continues, the economic pressures to avoid the manufacturer's delivery charge will persist. All told, then, manufacturers have helped to create a situation which makes wholesaling new cars both a matter of survival for some dealers and a very profitable business for used car dealers in locations remote from Detroit.

The CHAIRMAN. If the dealer passes on the saving in freight resulting from towing the car, in the fashion you have indicated, would that be called bootlegging?

Mr. BICKS. It certainly would, and it is exactly what happens. You don't hear very many consumers complaining about bootlegging.

Mr. ROGERS. There has been a suggested amendment here which in effect puts parties under a duty and responsibility to act in good faith. Part of the amendment says:

Provided, That in any such suit the manufacturer shall not be barred from advertising in defense of any such action the failure of the dealer to act in good faith.

Now if that was adopted, do you feel that a manufacturer would have a good defense if he proved that the dealer bootlegged his automobiles?

Mr. BICKS. Well, it is not so much a question of what I feel, because in response to that very question on the Senate floor Senate O'Mahoney indicated that the manufacturer would have a defense.

The CHAIRMAN. Would or would not?

Mr. BICKS. Would, and that is one of the problems.

The CHAIRMAN. But that defense would be inconsistent with the antitrust laws?

Mr. BICKS. Absolutely; that is the point I am going to make.

The CHAIRMAN. We have a proposed amendment to the effect that "No provision of this act shall repeal, modify or supersede directly or indirectly any provision of the antitrust laws of the United States."

Mr. BICKS. Well, I think that certainly the bill as passed by the Senate is inconsistent at least with the spirit of that amendment.

Against this background this Department has refused to waive criminal proceedings should provisions restricting bootlegging be incorporated in dealer contracts.

Our belief is, first, that such provisions would create unlawful restraints on the trade of a franchised dealer with customers of his choice. For, as the Supreme Court held in the Bausch & Lomb case, and reiterated only last month in its McKesson & Robbins decision:

A distributor of a trademarked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell * * *

Beyond that, we believe efforts to bar sale of new cars to used car dealers for resale to the public also may stabilize prices of new cars. Price fixing, as you all know, is perhaps the clearest violation of the antitrust laws, prosecuted criminally in all but exceptional cases.

The CHAIRMAN. Mr. Bicks, let me get something clear.

The corollary from our questions and answers is, isn't it, that if the dealer bootlegged, he would not be guilty of bad faith?

Mr. BICKS. That is right.

Mr. KEATING. Well, this bootlegging is just a phrase that the manufacturers have used in order to put a stop to it.

Mr. BICKS. You are absolutely right but in all candor I don't think full blame lies on the manufacturer. This is really something that the

more established dealers with the plushier showrooms have just as much an interest in stamping out as manufacturers.

After all, what this enables the consumer to do is to buy a car from a used-car lot if he wants, from a less lavish showroom, or if he would like, go into a potted-palm showroom and buy his car.

Our position is that both have a right to exist and that the consumer is entitled to a choice of this.

Therefore we have resisted all efforts to stamp out what may be a newer form of distribution in the sale of autos.

Mr. MALETZ. Mr. Bicks, as I understand it, then, it is the Department's position that this practice of so-called bootlegging is entirely consistent with the antitrust laws, is that right?

Mr. BICKS. Not only is the practice consistent with the antitrust laws but any effort to stamp it would be inconsistent.

Mr. MALETZ. Therefore, if a proviso were added to H. R. 11360 similar to the proviso which was added to S. 3879 on the Senate floor, I would take it that a manufacturer who canceled out a dealer on the basis that the dealer was bootlegging would not be authorized to assert in defense of that suit that the dealer's bootlegging constituted bad faith?

Mr. BICKS. The manufacturer should not be so authorized. I am afraid he may be under the Senate-passed bill.

Mr. MALETZ. Well, would he be so authorized if the amendment suggested by this committee were adopted?

Mr. BICKS. He would not.

Mr. MALETZ. The amendment reads as follows:

No provision of this act shall repeal, modify, or supersede directly or indirectly any provision of the antitrust laws of the United States.

Mr. BICKS. He would not, sir.

That amendment would take care of the situation, providing you made clear that you meant to cover two particular situations which I am going to deal with later.

I think that would take care of it.

Mr. MALETZ. Thank you.

Mr. KEATING. Let me get this straight.

Bootlegging consists of a dealer who is overloaded with cars that he has to sell and, who sells new cars to a used-car dealer. Then the used-car dealer sells the car as a used car; is that it?

Mr. BICKS. I don't know how he sells it. He may drive it around the block or drive it 10 miles.

Mr. KEATING. What price does he sell it for?

Mr. BICKS. He generally sells it at much less than the franchised dealer would sell it.

Mr. QUIGLEY. I would take issue with that.

Mr. BICKS. Then why do people go to a used-car dealer and buy a car from him if he does not sell it at less than the franchised dealer?

Mr. QUIGLEY. That I have not been able to figure out, either.

Mr. KEATING. I do not understand how that operates.

Mr. BICKS. What is unclear in your mind?

Mr. KEATING. I do not understand how they could get consumers to buy a new car off of a used-car lot unless there is some incentive in the way of price.

Mr. BICKS. Of course, there is. It may be substantial.

Mr. KEATING. Then who absorbs it? Does the dealer absorb that?

Mr. BICKS. No. Nobody absorbs it in the sense that anybody takes a loss. A used-car dealer does not have a lavish showroom. He does not have the expenses that a franchised dealer has. He can, just as a discount house can, sell the product at a cheaper price and still make a profit. It is one form of competition.

Mr. McCULLOCH. Excuse me.

Mr. KEATING. Yes.

Mr. McCULLOCH. As a matter of fact, we have the same thing going on in the household appliance distribution all over America.

Mr. BICKS. Absolutely.

Mr. SCOTT. That is, the discount houses.

Mr. BICKS. That is right. It is certainly a parallel phenomenon.

Mr. McCULLOCH. And as a matter of fact, there are some dealers who dispose of their automobiles in this way who maybe are not overloaded with automobiles. If they can get a quick profit of \$25 or \$100 each without the responsibility of service and everything that goes with it, many of them are willing to sell automobiles more or less wholesale to used-car dealers.

Mr. BICKS. Absolutely. That is a phenomenon that arises particularly in sales to out-of-territory purchasers. In other words, a Buick dealer, for example, in Hyattsville will sell at a much lower price to someone not in Hyattsville if he is reasonably sure that he is not going to have to service that car, than he will to somebody he knows is going to bring it back in time after time for service.

Mr. McCULLOCH. In other words, we are talking about practices here that go on in several different industries. They are not new, and there is no unanimity of opinion among all people concerned; is there?

Mr. BICKS. Not only is there no unanimity among people generally, there is no unanimity even among auto dealers as to whether bootlegging is good or bad. As I understand it, they were split roughly 50 percent. The newer, more aggressive dealers like it. It is the older, more established ones that have lavish showrooms that do not. They get hurt, just as the department stores do not like discount houses.

Mr. SCOTT. Following up Mr. Quigley's question, I had the impression that if someone goes to a used-car dealer and buys a new car from him, and he calls it a used car, he may save \$600 on a car in the \$3,000 or \$4,000 range. But also, if you are reasonably acquainted—I mean, an introduction will do—with any dealer, you get the same \$600 saving because he is so anxious to move his cars off the floor.

Mr. BICKS. Absolutely, Congressman Scott. But would you get that saving were he not faced with the probability that if he did not give it to you, you would buy from the bootlegger?

Mr. SCOTT. Yes. I was thinking of that. Because his channels are choked he can only sell a certain number through retail outlets and he has to get rid of some somewhere else. So he is happy to do you a favor and give you \$600 or \$700, and often does it by increasing the trade-in value of your car to that extent. Isn't that the way it is done?

Mr. BICKS. That is true.

Mr. QUIGLEY. Could I comment on Mr. McCulloch's observation about the situation that exists in the appliance field? I think there is an important difference in this situation from that in the appliance field, because the suppliers for discount houses in the appliance field are not the retailers with whom the discount houses compete. In the automobile industry, the dealers are in fact the suppliers to the discount used-car lots.

Mr. McCULLOCH. I think you will find conditions, similar, however, at least in some of the fields with respect to household lines, where there is competition not only at the level that we ordinarily think of, but at the same general level as in the automobile field. I believe you will find that to be the case.

Mr. BICKS. Mr. Chairman, I made the statement before that dealers were roughly split on this. In order to be scrupulously accurate, Mr. Kramer tells me that it is nearer 60 to 40. About 60 percent of the dealers want to stop bootlegging. About 40 percent do not.

Mr. KEATING. About 60 percent favor bootlegging?

Mr. BICKS. No. About 60 percent, according to one survey, do not.

Mr. KEATING. They do not like it.

Mr. SCOTT. Mr. Bicks, did you find in this investigation any evidence of the practice that was fairly widespread some years ago where an individual would go to a dealer with his car for a trade-in and would not receive a satisfactory offer to the individual from the dealer. He would then move around to other dealers in the same make of car and would discover that the first dealer had phoned all the others and said, "Don't deal with this man." Have you discovered that?

Mr. BICKS. I have never discovered it.

The CHAIRMAN. Suppose you proceed, Mr. Bicks.

Mr. BICKS. Yes.

With this problem of bootlegging in mind, I question, under the pending bill: Could a manufacturer, in a dealer suit for damages stemming from a manufacturer's refusal to supply adequate cars, set up by way of defense the dealer's bootlegging as lack of good faith? Similarly, could a dealer located near another franchised dealer who has bootlegged sue a manufacture for supplying the bootlegging dealer with all the cars he wants?

Answers to these questions the legislative history of S. 3879 thus far beclouds. Thus, during the course of Senate debate, Senator Curtis asked:

Suppose the dealer has used his franchise to secure cars from the manufacturer, and has, in turn, disposed of them at cut-rate prices to unauthorized dealers. The question, Does he have an equity in his franchise that the bill will protect?

In reply, Senator O'Mahoney stated:

I would feel that such a person would have no equity at all before the court. Even if he brought suit, the suit could not stand up.

Later in debate, however, Senator Bricker asked:

What would be the proof of his bad faith? He would not have violated his franchise or his contract with the dealer, or any law.

And Senator O'Mahoney replied:

In such a case, of course, suit could be brought, and the question of bad faith or good faith would be one for the jury to decide.

In other words, there seems to be a little retreat here, but in any event, the issue is not clear.

Were a manufacturer able to defend under this bill because a dealer had bootlegged, then this proposal could create real anomalies. For a manufacturer's termination, cancellation or even refusal to renew a franchise, because of a dealer's bootlegging, might—if carried on with other dealers' cooperation—transgress the antitrust laws. As the Attorney General's report put it:

Viewed in the larger business setting, even individually conceived refusals to deal may become an integral element in a violation of section 1 of the Sherman Act. Thus, enforcement of a resale price policy against resourceful price-cutting dealers may invite joint policing efforts, tantamount to agreement, between the seller and distributors willing to adhere to his resale price.

So construed, then, this bill would bar a bootlegging dealer's recovery for a manufacturer's cancellation or nonrenewal. This, despite the fact that such manufacturer conceived action, might transgress the antitrust laws.

Such a result, moreover, would be at odds with the spirit at least of one amendment now before your committee. By that amendment a new section would be added to H. R. 11360 to insure that—

no provision in this act shall repeat, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

The CHAIRMAN. I take it, then, the Department is in favor of that amendment?

Mr. BICKS. Very definitely.

To fully effectuate the apparent design of that amendment, the fact a dealer has bootlegged should not be a defense in his suit for damages stemming from a manufacturer's refusal to supply cars, or termination of his franchise. In corresponding fashion, a franchised dealer adjoining a bootlegger should not be able to recover from a manufacturer who must supply the bootlegger.

Beyond these questions of bootlegging, how would this bill affect a manufacturer's ability to appoint new dealers in any area? Appointment of added dealers in an area is but one normal means for securing better distribution. As a result, antitrust is concerned with assuring newcomers their fair chance to enter the auto dealer business and, in process, promoting untrammelled distribution of new cars.

These goals, language in H. R. 11360, as well as S. 3879 as passed by the Senate, might thwart. Specified by section 1 (e) in H. R. 11360, for example, as part of the manufacturer's good faith obligation, is the duty to—

protect all the equities of the automobile dealer which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer.

Similarly, S. 3879, as passed by the Senate, includes the obligation—

to preserve all equities * * * inherent in the nature of the relationship between such parties by such franchise.

In light of auto industry history, however, this reference to equities of the dealer might well include the dealer's right to be free from competition from added franchise dealers. As I understand it, one major auto manufacturer's policy now is to allow appeal to its dealer relations board decisions of its sales managers which affect the equity of the dealer. Within this language, appointment of an additional dealer in

committee may wish to consider amending section 1 (b) to eliminate the words "understanding, or arrangement" on page 2, lines 7 and 10.

Were these amendments, along with others typed on the draft—which I have before me, and which I understand embodies the amendments your committee is considering—the bill's prime effect would then be to give some chance for recompense to any individual dealer damaged by a manufacturer's "coercion, intimidation, or threats of coercion or intimidation * * *" The language "fair, equitable, and nonarbitrary," then, would be merely a guide to the essential judicial determination—whether "coercion" or "threats" of same have in fact occurred.

So amended, the bill would supplement existing antitrust remedies a dealer may have against a manufacturer who conspires with another dealer to drive him out of business. And I refer there to the Webster Motor case. That is the case where a dealer collected \$190,000 trebled or almost \$600,000 from a manufacturer who conspired with another dealer in the area to eliminate him. So antitrust at present may provide some remedy.

Mr. KEATING. Was that an automobile dealer?

Mr. BICKS. Yes; it was a Packard dealer.

As the Chairman of the Federal Trade Commission wrote this committee on July 3, 1956:

A practice of using coercion, intimidation, or discrimination to induce dealers to order or accept any product has long been held to be an unfair method of competition and an unfair practice violative of section 5 of the Federal Trade Commission Act. The Commission has brought proceedings against such practices whether followed by automobile manufacturers or others. Of course, all of such proceedings by the Federal Trade Commission must have in them the element of public interest. They were designed to stop practices thought to be injurious to the public rather than to determine the question of damages to private parties for wrongs claimed to have been done.

Were the bill so limited to affording an individual dealer some damage remedy in cases of "coercion, intimidation, or threats of" same in the course of performing franchise contract obligations or in renewing such contracts, this department from an antitrust standpoint would have no objection to the bill.

Mr. McCULLOCH. It is hardly necessary to say that you really wanted to stress those two different phrases, "contract obligations," and "from an antitrust standpoint." You are not expressing an opinion from the standpoint of policies.

Mr. BICKS. No; we are not—

Mr. BICKS. As I have indicated, those are very basic issues that are for Congress to decide initially. Those are really matters for the wisdom of Congress. I think you are right in emphasizing that they are extremely serious steps.

The bill without these amendments, effects a drastic modification of existing contracts, and it is special legislation for one industry. If you are willing to take those steps, these amendments, I think, can eliminate most of the antitrust problems.

Mr. McCULLOCH. And would it be possible to apply some of the reasoning behind the philosophy in this bill to say that it might be applied to not only the automobile business, but to farm implements, and to life insurance, and to office equipment and home appliances, and real estate, gasoline dealers, or wherever there is a similar relationship in the economic life of our country.

Mr. BICKS. That is what concerns us.

The CHAIRMAN. We have an amendment here.

Mr. BICKS. That is right.

If you like, I can skip this.

The CHAIRMAN. Go ahead.

Mr. BICKS. The Senate report, for example, emphasizes throughout this bill's concern for the dealer's franchise investment. After remarking on the "substantial investment of his own personal funds by the dealer in the business," the report, on page 2, states, the dealer "becomes in a real sense the economic captive of the manufacturer." Building on this analysis, the report concludes (p. 5) :

The economic fact underlying the relationship between manufacturer and dealer justify the imposition upon the factory of duties of fiduciary or quasi-fiduciary character * * * Under these circumstances, it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character.

With this language uppermost it may well be that the Senate committee at least intended that dealers' "equities" include some safeguard for dealers' margins of profit or investment. Section 3 of H. R. 11360 would apply this standard to any "terminating, canceling, or not renewing" of a dealer's franchise. Any failure to renew, it seems clear, might drastically deplete a dealer's investment. Similarly, an increase in auto production might mean harder competition among dealers but a lower return for any one dealer. From this it follows that these proposals could oblige a manufacturer, on pain of a suit for damages, to gear his production and distribution, not to market stimuli, but to preserve each dealer's profitable investment.

Such possibilities for restraint on the free development of competitive auto distribution one amendment now before this committee goes a long way toward removing. This amendment would strike from H. R. 11360's definition of "good faith" the language following the word "intimidation" on line 2 of page 3. By that amendment section 1 (e) would read :

The term "good faith" shall mean the duty of each party to any franchise and all officers, employees, or agents thereof, to act in a fair, equitable, and nonarbitrary manner toward each other so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party.

Adoption of this amendment might well eliminate many of the anticompetitive possibilities inherent in the present "equities" language.

To further clarify this good-faith obligation, this committee might wish to consider amending, in addition, H. R. 11360's definition of "franchise." By section 3 of H. R. 11360 (sec. 2 of the Senate-passed bill), a manufacturer would be liable for failure "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing this franchise * * *". The term "franchise," however, is defined by both bills to include not only the written "agreement" or "contract," but also any "understanding or arrangement between any automobile manufacturer and any automobile dealer." To insure that the language "understanding or arrangement" does not include present trade understanding perhaps limiting, for example, location of new dealers, this

committee may wish to consider amending section 1 (b) to eliminate the words "understanding, or arrangement" on page 2, lines 7 and 10.

Were these amendments, along with others typed on the draft—which I have before me, and which I understand embodies the amendments your committee is considering—the bill's prime effect would then be to give some chance for recompense to any individual dealer damaged by a manufacturer's "coercion, intimidation, or threats of coercion or intimidation * * *". The language "fair, equitable, and nonarbitrary," then, would be merely a guide to the essential judicial determination—whether "coercion" or "threats" of same have in fact occurred.

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Mr. McCULLOCH. And would it be possible to apply some of the reasoning behind the philosophy in this bill to say that it might be applied to not only the automobile business, but to farm implements, and to life insurance, and to office equipment and home appliances, and real estate, gasoline dealers, or wherever there is a similar relationship in the economic life of our country.

Mr. BICKS. Yes; I agree with you a hundred percent. If you pass this bill I expect you will see many of those people before you next session.

Mr. KEATING. No question about that in my judgment, Mr. Bicks. There is also the question whether they should not be here.

Mr. BICKS. That is right.

Mr. KEATING. I want to compliment you on your presentation. You have been very helpful in my thinking on this bill. You have made a very fine statement here.

Mr. BICKS. Thank you, sir.

Mr. McCULLOCH. Yes. Mr. Chairman, one thing further. I did not mean to imply that perhaps it would not be necessary for the Congress to enter this field some time. But as I understand the situation, many of these overtones were not explored in the Senate, and there was actually no written bill whose provisions were discussed by witnesses and which were carefully gone over in the way you have gone over this bill.

And I am raising various questions so that I can, as far as I am concerned, be sure that I am not entering hurriedly into a field that may take us far beyond what first appears.

Mr. SCOTT. At page 21, Mr. Bicks, in referring to amendment to section 1 (e), you say:

Adoption of this amendment might well eliminate many of the anticompetitive possibilities inherent in the present equities language.

Could you discuss some situations of the anticompetitive possibilities where the adoption of this amendment might not go far enough to correct the difficulty?

You say it eliminates many of the objections?

Mr. BICKS. That is a very good question and I wish I could give you a specific answer.

The difficulty I have with the bill even as amended is that I cannot tell you precisely what it does.

On the one hand, it may do nothing more than provide an added remedy for violation of existing contract provisions as amended. On the other hand, my difficulty with any blanket endorsement, and why I said "many" of the anticompetitive possibilities, is that this language is so broad, has never been construed, and I cannot really detail in my own mind, much less before this committee, all the situations it might apply to.

Mr. SCOTT. It opens up, does it not, the question of policy on the part of the manufacturer in terminating any franchise of any dealer anywhere in the country?

Mr. BICKS. It does; it certainly does.

Mr. SCOTT. It puts the Government into the investigation of the manufacturer's policy every time a dealer franchise is terminated if the dealer wishes to make the point.

Mr. BICKS. The Government in the sense of a court, yes.

Mr. SCOTT. In the sense of a court?

Mr. BICKS. Yes.

The CHAIRMAN. Mr. Bicks, I would like to ask this:

Suppose a General Motors dealer in the city of Detroit brings action against General Motors. I presume a corporation of the State of Michigan.

Could the parties bring action in the Federal court under this bill?
 Mr. BICKS. I am not sure GM is a Michigan corporation. I thought it was a Delaware corporation.

Mr. QUIGLEY. Let's just assume that it is.

Mr. BICKS. Well, I would say that that would depend.

Mr. QUIGLEY. If it is a Delaware corporation let's add a Buick dealer in Wilmington.

Mr. KEATING. In other words, do they have to show diversity of citizenship?

Mr. BICKS. Of course, generally, parties must show diversity. Even without this bill, however, a dealer perhaps could show diversity by joining an out-of-State distributor, along with the manufacturer, as a defendant.

The CHAIRMAN. I too want to join in the compliments paid by the other members for a very effective statement, Mr. Bicks. Of course, that does not include your quotations from me.

Mr. BICKS. Thank you, sir.

Mr. SCOTT. I would like to join in it and include the quotations from the chairman.

Mr. BICKS. Thank you, sir.

(Mr. Bicks' proposed statement follows:)

STATEMENT BY ROBERT A. BICKS, LEGAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

I appear today in response to your chairman's request for this Department's views on H. R. 11360 as well as its Senate-passed companion, S. 3879. These proposals aim "to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suits in the district courts of the United States to recover [according to the bills as introduced, 'twofold,' and according to the Senate-passed bill, 'compensatory'] damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers."

Effectuating this broad purpose, section 3 of the bills as introduced, renumbered "section 2" in the Senate-passed bill,¹ provides "an automobile dealer" may sue "any automobile manufacturer" in Federal Court for damages, plus cost of suit and attorney's fees, "sustained * * * by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer." To this language the Senate-passed bill adds the proviso, according to the Senate bill's sponsor, already implicit in the bills as introduced,² "[t]hat in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith."

Finally, section 1 (e) of the bills as introduced defines "good faith" as—

"* * * the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimi-

¹ Sec. 2 of the bill as introduced was stricken. The bill's principal sponsor, however, concluded that this amendment made no substantive change. Thus, Senator O'Mahoney stated: "I would be willing, even, to go so far as to strike out section 2 altogether."

"Mr. CASE of New Jersey. It is sort of redundant."

"Mr. O'MAHONEY. Because, as the Senator from New Jersey says, it is sort of redundant" (102 Cong. Rec. 9530, June 19, 1956).

Again, later in discussion, Senator O'Mahoney repeated sec. 2 "is redundant; it is surplusage" (ibid., p. 9531).

² Thus, referring to S. 3879 before these amendments, Senator O'Mahoney stated: "Under the bill, good faith is a matter for the jury to determine, and the manufacturer is perfectly free to introduce any evidence whatsoever with respect to the lack of good faith on the part of the dealer. If there should be such, that would be a defense, without the slightest doubt" (102 Cong. Rec. 9516, June 19, 1956). Again, later in debate, referring to the unamended bill, Senator O'Mahoney assured the obligation of good faith already "does refer to both parties; it could not be otherwise" (ibid., p. 9516).

dation, and in order to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and automobile manufacturer."

On the Senate floor this language was broadened to include within "good faith" a "duty," not only on the manufacturer, but on "each party to any franchise." Correspondingly, relevant "equities" were extended to cover not only "equities of the automobile dealer" but of any "other party" as determined by "such franchise."

The term "franchise," however, goes beyond the written agreement or contract. Included as well is any "understanding or arrangement between any automobile manufacturer and any automobile dealer which purports to fix the legal rights and liabilities of the parties * * *." So much for a sketch of the bills' provisions.

Commenting on these proposals, my plan is, first, to touch on three basic policy issues, now facing this committee, these proposals raise. These broad issues aside, I shall, second, analyze the language of these proposals, as well as amendments before this committee to gage their effects on our common goal of assuring free competition in the distribution and sale of motorcars.

I

At the outset, H. R. 11360 and the Senate-passed bill pose at least three basic issues for Congress to decide. First, as Chairman Celler put it in his statement opening hearings on this bill:³

"Implicit in these measures is the premise that in the automobile industry concentration of economic power among the manufacturers has proceeded to the point where the ordinary rules of contract law are no longer adequate for the protection of the dealers or the public."

Second, this premise, in turn, assumes that problems faced by auto dealers differ sufficiently from problems of, for example, farm machinery, "white goods," electrical appliance, television, or independent tire dealers, to warrant the special treatment these measures propose. Finally, again in the language of your chairman:⁴

"There is also the premise that enforcement of the antitrust laws has not adequately coped with this situation."

Treating these issues, I realize that under our system of representative government, such questions are for Congress—and not this Department—initially to resolve. However, as Chairman Celler stated opening these hearings:⁵

"* * * the committee has invited interested parties, representing all points of view, to testify. The Chair wishes to state that this subcommittee will consider the evidence presented here most carefully indeed, and based on that consideration, will make expeditious recommendations on the pending measures * * *."

With this invitation in mind, I raise certain questions which may aid your consideration.

First, as your chairman suggested, these proposals alter "ordinary rules of contract law" by imposing on parties to existing contracts obligations beyond those for which they contracted. As Congressman McCulloch asked Senator O'Mahoney, before this committee July 2, 1956: "* * * [W]on't the remedy which is proposed in the legislation affect the contracts or the franchises or the agreements which have been heretofore entered into?"⁶ In reply, Senator O'Mahoney said, "Now I have no question in my mind at all about the correctness of the general statement that you have made." Senator O'Mahoney went on to emphasize, however, that the bill would enable suit only "for acts to be committed in the future."⁷

As applied to future acts under existing franchises, then, this bill would apparently alter the agreed-upon obligations of the parties. As the Senate committee report on S. 3879 put it, this bill "imposes a duty of good faith in

³ Official verbatim transcript of hearings before special subcommittee of the Judiciary Committee of the House of Representatives in connection with its study of the antitrust laws, July 2, 1956, p. 3.

⁴ *Ibid.*, p. 3.

⁵ *Ibid.*, pp. 2-3.

⁶ *Ibid.*, p. 27.

⁷ *Ibid.*, p. 27. This statement accords with what the Supreme Court has called a settled "rule of construction that all statutes are to be considered prospective unless the language is express to the contrary or there is a necessary implication to that effect" (*William Danzer Co. v. Gulf R. R.*, 268 U. S. 633, 636 (1924); see also *Miller v. United States*, 294 U. S. 435, 439 (1935); *Brewster v. Gage*, 280 U. S. 327, 337 (1930)).

certain situations upon the manufacturer *in addition to any obligations existing under the franchise.*"⁹ [Italic added.] And that report goes on, [t]his right to court review will exist *irrespective of current franchise provisions to the contrary.*"⁹ [Italics added.] Finally, the Senate report concludes: "A *wholly new right of action is created by this bill* in enabling a dealer to bring suit to test the good faith of a manufacturer * * *."¹⁰ [Italic added.]

Despite this effect on existing contracts, the Senate-passed bill, if enacted, might well be held constitutional. For, as the Supreme Court early held " * * * the power to prescribe the rule by which commerce is to be governed * * * like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution."¹¹ Exercising that power, the law is equally well settled, Congress has "authority to resort to all means * * * appropriate and plainly adapted to the permitted end * * *."¹² Considering whether particular statutes are "appropriate and plainly adapted to the permitted end," the Court has upheld enactments with far-reaching effects on existing rights.

In *Louisville & Nashville R. Co. v. Mottley*,¹³ for example, a contract to furnish free rides valid when made and based upon adequate consideration—was held unenforceable when Congress later, exerting its commerce power, made it unlawful for railroads to give free trips. Upholding the statute's constitutionality, the Supreme Court reasoned "that * * * [Congress'] exercise of * * * [the commerce] power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable."¹⁴ Even more recently the Supreme Court upheld rent regulations which prevented execution of a judgment for eviction rendered by a State court before the enabling legislation was passed. As the Court there reasoned: "¹⁵

"Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from federal regulation is not gained through forehanded contracts. Were it otherwise the paramount powers of Congress could be nullified by 'prophetic discernment.'"

From Congress' power to pass this bill, however, the wisdom of its exercise by no means follows. That question, I suggest, turns in part at least on, first, the extent auto dealers' lot in fact differs from other independent businessmen's and, second, whether, as the chairman stated in his opening statement, Congress is ready to conclude that a free market, buttressed by antitrust, "has not adequately coped with this situation" and cannot do so.¹⁶

This bill assumes that auto dealers, as the result of their weak bargaining position vis-a-vis auto manufacturers, have suffered. Any rational comparison of auto dealers' bargaining power with other independent retailers' strength would require a broad inquiry into retailing generally. Investigation thus far, however, has focused largely on auto dealers. True, as Senator O'Mahoney pointed out, Congress may decide to legislate, first, for auto dealers and, later, consider other retailing sectors. To the wisdom of such a step, however, the following figures may be relevant.

Roughly one-half, or 20,000, of the 40,000 franchised automobile dealers are franchised by General Motors Corp. In 1953, according to statistics before the Senate Antitrust Subcommittee, these dealers averaged a 14 percent return on

⁹ S. Rept. 2073, 84th Cong., 2d sess., p. 1.

¹⁰ *Ibid.*, p. 1.

¹¹ *Ibid.*, p. 6.

¹² *Gibbons v. Ogden*, 22 U. S. 1, 195 (1824); see also *McCulloch v. Maryland*, 17 U. S. 316, 421 (1819).

¹³ *United States v. Darby*, 312 U. S. 100, 124 (1940); see also *United States v. Wrightwood Dairy Co.*, 315 U. S. 110 (1942).

¹⁴ 219 U. S. 487.

¹⁵ *Ibid.*, p. 482.

¹⁶ *Fleming v. Rhodes*, 331 U. S. 100, 107 (1947). See also *North American Co. v. S. E. C.*, 327 U. S. 686, 707 (1946); cf. *Norman v. Baltimore & Ohio R. Co.*, 294 U. S. 240, 307, 308 (1935); *Union Bridge Co. v. United States*, 204 U. S. 364, 400 (1907); *Scranton v. Wheeler*, 179 U. S. 141, 162, 163 (1900); *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 228, 229 (1899); *Battaglia v. General Motors Corporation*, 169 F. 2d 254 (C. A. 2, 1948).

¹⁷ Official verbatim transcript of hearings before special subcommittee of the Judiciary Committee of the House of Representatives in connection with its study of the antitrust laws, July 2, 1956, p. 3.

net worth—after taxes.¹⁷ In 1954 this average return dropped to 9 percent; but, our research reveals, for the year 1955 this average return jumped back up to 13.81 percent—again I emphasize—after taxes.

Comparison of these General Motors dealers returns with other retailers' requires at least two caveats. Initially, Ford, Chrysler, American Motors and Packard-Studebaker dealers may have fared differently from their brethren affiliated with General Motors. Beyond that, even assuming GM dealer returns fairly represent all auto-dealer profits, these may be relevantly compared only with returns of other independent retailers that face risks comparable to auto dealers.

With these cautions uppermost, consider returns earned, for example, by farm equipment dealers for 1955. During 1955, recall, GM dealers earned 13.81 on net worth after taxes. Farm equipment dealers, in contrast, averaged some 10.6 percent on net worth—before taxes.¹⁸ Thus, for 1955, GM dealers—after taxes—earned 3 percent more on their investment than farm equipment dealers before taxes.

Return figures for independent retailing generally are not now readily available past 1954. GM dealers' 9 percent return for that year, recall, was the lowest since World War II. However even for 1954, these auto dealer returns, according to a Dun & Bradstreet survey,¹⁹ far surpassed 11 of the 12 other retailing lines surveyed. For your record, I submit a summary of that survey's findings.

These figures are offered not to suggest that auto dealer profits are too high or too low, but merely to highlight their relation to other sectors of retailing—a relation crucial to this committee's decision on the pending bill. Nor am I unaware that, despite any profit ratios, the vast disparity in size between any auto manufacturer and any single dealer offers manufacturers the opportunity for abuse. As a result, this Department has been particularly alert to abuses in the manufacturer-dealer relationship.

The pending bill's final assumption, however, is that, antitrust enforcement, no matter how alert, cannot remedy this power disparity. Appraising this premise, most relevant are steps this Department has taken.

The basic problem, as the Attorney General has indicated, stems from the growing pattern of auto industry concentration. Since World War II, auto industry production has been increasingly concentrated among the three majors, principally General Motors. And once-hoped for competition from independent producers has become more remote. In 1946, for example, GM produced 48 percent of all passenger cars. By 1954, GM's share jumped to 52 percent. In that year, Ford produced about 31 percent, Chrysler about 13, and the remaining 3 independents about 4 percent. Since that time, however, GM has jumped even further. Figures thus far for 1956 suggest that GM now produces more than 55 percent of all passenger cars in this country. Moreover, if GM's share is calculated not by number of cars produced but by dollar volume, their share would be even higher. Finally, as you all know, Packard-Studebaker's condition has worsened.

With this situation in mind, more than 2 years ago Attorney General Brownell announced this Department sought "the explanation of the developing pattern of concentration in the auto industry." Since that time, at his direction, this Department has continuously scrutinized auto industry developments. In point of fact, auto company and television problems now occupy a large portion of our general litigation section's resources.

Such inquiry it seems clear requires an investigation of great magnitude. As a result, this Department must proceed aware of the limitations of our resources. Should investigation reveal any violation of the antitrust laws, prosecution will result.

More specifically, investigation of many particular abuses this bill seeks to remedy has long been under way. As the Senate report put it:

"The evidence obtained indicated that great pressure had been exerted, at least by the dominant automobile manufacturers, upon dealers to accept automobiles, parts, accessories, and supplies which they did not need, did not want, or did not feel their market was able to absorb."²⁰

¹⁷ Hearings before Antitrust Subcommittee of the Judiciary Committee, U. S. Senate, on *A Study of the Antitrust Laws*, December 9, 1955, p. 4055.

¹⁸ This data was obtained from a study made by the National Retail Farm Equipment Association under the title 1955 Cost of Doing Business in the Farm Equipment Retailing Industry.

¹⁹ Diversification in Business Activity, Dun & Bradstreet, Inc., 1956, pp. 48-49, 74-75.

²⁰ S. Rept. 2073, 84th Cong., 2d sess., p. 2.

Before the Senate held its hearings, however, this Department received complaints that the Ford Motor Co. required its dealers to handle exclusively, or at least to sell a specified quota of, parts, accessories, and tools made or approved by Ford. In 1953 the Attorney General obtained voluntary access to Ford Motor Co. files. And representatives of this Department have examined the files of many, many Ford dealers. This examination has been conducted not only in Detroit but in various Ford offices throughout the country. In the course of this investigation, more than 10,000 Ford documents have been copied by our investigators.

This survey sprang from persistent complaints not only from Ford dealers but also from independent manufacturers and jobbers of parts and accessories that Ford required its dealers to do business only with the Ford Co. According to the complainants, independent manufacturers and jobbers of parts and accessories were thus excluded from access to the thousands of retail outlets represented by Ford dealers.

This complaint the Ford Motor Co. has flatly denied. It could not deny that prior to 1949 it required its dealers by contract to handle exclusively Ford parts and accessories. However, in 1949 Ford changed its dealer contracts by removing the express exclusive dealing requirement. And Ford insists that it has a right to take all reasonable steps to see to it that its dealers do not palm off as genuine Ford parts items that are in fact not made or approved by Ford. Ford also insists that it has a right to insist that its dealers adequately represent it as merchandisers of its parts and accessories. Ford maintains that it has done no more than this.

We have almost completed evaluating the mass of material our investigators have collected. On the one hand, we may have to conduct even more investigation in this area. On the other, the material already gathered may suggest violation. If the Attorney General concludes that, despite dealer contract revisions, violations have occurred, in accordance with his responsibility to enforce the law, suit will follow.

It is against the background of what antitrust can do in this case that this committee must appraise the assumptions that this bill premises.

II

These general policy issues aside, I turn to the specific language of H. R. 11360, the Senate-passed bill, as well as amendments which I understand from the committee staff, this committee now considers. Analyzing these proposals, I treat, their effect, first, on so-called bootlegging and second, on manufacturers' ability to locate new dealers and gear production, not to safeguard dealers' profits, but to meet market demand.

First, "bootlegging." Here some definition of terms may be helpful. "Bootlegging" is oftentimes used to describe the sale by franchised dealers of new automobiles to used-car dealers for resale to consumers. Development of this practice stems from postwar auto industry changes. From the end of World War II until 1953 the auto industry worked to fill the backlog of demand which had accumulated during World War II as well as to meet unanticipated postwar expansion in demand. During that period of time, new-car prices were relatively firm.

Beginning in late 1953, inventories of new cars in dealers' hands began to mount. This mounting inventory tied up substantial amounts of dealer capital. As a result, many dealers as a matter of sound business sought to reduce their investments in inventories. And so the era of "blitz sales" and so-called bootlegging began.

Notwithstanding the difficult position of some dealers, factory production continued at record levels. So, many dealers faced the choice of termination or accepting automobiles in excess of their retail business requirements. Many dealers chose the latter course and sought new outlets for the inventory which they were unable to move through retail channels.

Another factor which encouraged sales of new cars by franchised dealers to used-car dealers was the manufacturers' practice of adding a "delivery charge" to the f. o. b. price of the new car. The delivery charge has been based on the assumption, generally contrary to the fact, that the car was shipped from a single basing point which was, in most cases, Detroit. The delivery charges in 1953 were at levels which made it possible to purchase a car in Detroit and drive it or tow it to distant points such as the west coast at a very substantial saving over the delivered price of the car in those areas.

Neither drive-away nor tow-bar transportation of automobiles is new to the automobile industry.²¹ To the extent such transportation has not involved misrepresentation or fraud on purchasers, it is a form of competition which is entitled to its test in the market place. Charges that in some cases speedometers have been disconnected and damaged cars have been sold as new cars, of course, warrant full prosecution under existing local laws relating to fraud and deceit.

This type of transportation responded, however, to some very simple laws of economics. It may be cheaper, under existing manufacturer-established delivery charges, to drive a car from Detroit to many areas of the country than to pay the manufacturer's delivery charge. So long as this continues, the economic pressures to avoid the manufacturer's delivery charge will persist. All told, then, manufacturers have helped to create a situation which makes wholesaling new cars both a matter of survival for some dealers and a very profitable business for used-car dealers in locations remote from Detroit.

Against this background this Department has refused to waive criminal proceedings should provisions restricting bootlegging be incorporated in dealer contracts. Our belief is, first, that such provisions would create unlawful restraints on the trade of a franchised dealer with customers of his choice. For, as the Supreme Court held in the *Bausch & Lomb* case,²² and reiterated only last month in its *McKesson & Robbins* decisions:²³

"A distributor of a trade-marked article may not lawfully limit by agreement, express or implied, the price at which or the persons to whom its purchaser may resell. * * *

Beyond that, we believe efforts to bar sale of new cars to used car dealers for resale to the public also may stabilize prices of new cars. Prices fixing, as you all know, is perhaps the clearest violation of the antitrust laws, prosecuted criminally in all but exceptional cases.

With this position in mind, I question, under the pending bill: Could a manufacturer, in a dealer suit for damages stemming from a manufacturer's refusal to supply adequate cars, set up by way of defense the dealer's "bootlegging" as lack of good faith? Similarly, could a dealer located near another franchised dealer who has "bootlegged" sue a manufacturer for supplying the "bootlegging" dealer with all the cars he wants?

Answers to these questions the legislative history of S. 3879 thus far beclouds. Thus, during the course of Senate debate, Senator Curtis asked:

"Suppose the dealer has used his franchise to secure cars from the manufacturer, and has, in turn, disposed of them at cut-rate prices to unauthorized dealers. The question, Does he have an equity in his franchise that the bill will protect?"²⁴

In reply, Senator O'Mahoney stated:

"I would feel that such a person would have no equity at all before the court. Even if he brought suit, the suit could not stand up."

Later in debate, however, Senator Bricker asked:

"What would be the proof of his bad faith? He would not have violated his franchise or his contract with the dealer, or any law."

And Senator O'Mahoney replied:

"In such a case, of course, suit could be brought, and the question of bad faith or good faith would be one for the jury to decide."²⁵

Were a manufacturer able to defend under this bill because a dealer had "bootlegged," then this proposal could create real anomalies. For a manufacturer's termination, cancellation or even refusal to renew a franchise, because of a dealer's bootlegging, might—if carried on with other dealers' cooperation—transgress the antitrust laws. As the Attorney General's Report put it:²⁶

"Viewed in the larger business setting, even individually conceived refusals to deal may become an integral element in a violation of section 1 of the Sherman Act. Thus, enforcement of a resale price policy against resourceful price-cutting dealers may invite joint policing efforts, tantamount to agreement, between the seller and distributors willing to adhere to his resale price."²⁷

²¹ See Report on Motor Vehicle Industry of FTC to 76th Cong., June 5, 1939, p. 1072.

²² *United States v. Bausch & Lomb Co.*, 321 U. S. 707.

²³ *United States v. McKesson and Robbins, Inc.*, No. 448, S. D. New York, June 11, 1956.

²⁴ Congressional Record, June 19, 1956, p. 9517.

²⁵ *Ibid.*

²⁶ Report of the Attorney General's Committee To Study the Antitrust Laws, p. 134.

²⁷ *United States v. Bausch & Lomb Optical Co.*, 321 U. S. 707, 723 (1944); *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441 (1921); *Hills Bros. v. Federal Trade Commission*, 9 F. 2d 481 (9th Cir. 1926); *Moir v. Federal Trade Commission*, 12 F. 2d (1st Cir. 1926); *Q. R. S. Music Co. v. Federal Trade Commission*, 50 F. 2d 768 (8th Cir. 1931); *Connecticut Importing Co. v. Continental Distilling Corp.*, 129 F. 2d 651 (2d Cir. 1942).

So construed, then, this bill would bar a "bootlegging" dealer's recovery for a manufacturer's concellation of nonrenewal. This despite the fact that such manufacturer conceived action might transgress the antitrust laws.

Such a result, moreover, would be at odds, with the spirit at least, of one amendment now before your committee. By that amendment a new section would be added to H. R. 11360 to insure that "no provision in this act shall repeal, modify, or supersede, *directly or indirectly, any provision of the antitrust laws of the United States.*" [Italics added.]

To fully effectuate the apparent design of that amendment, the fact a dealer has "bootlegged" should not be a defense in his suit for damages stemming from a manufacturer's refusal to supply cars, or termination of his franchise. In corresponding fashion, a franchised dealer adjoining a "bootlegger" should not be able to recover from a manufacturer who must supply the "bootlegger."

Beyond these questions of bottlegging, how would this bill affect a manufacturer's ability to appoint new dealers in any area? Appointment of added dealers in an area is but one normal means for securing better distribution. As a result, antitrust is concerned with assuring newcomers their fair chance to enter the auto dealer business and, in the process, promoting untrammelled distribution of new cars.

These goals' language in H. R. 11360, as well as S. 3879 as passed by the Senate, might thwart. Specified by section 1 (e) in H. R. 11360, for example, as part of the manufacturer's "good faith" obligation, is the duty to "protect all the equities of the automobile dealer which are inherent within the nature of the relationship between the automobile dealer and the automobile manufacturer." Similarly, S. 3879, as passed by the Senate, includes the obligation "to preserve all equities * * * inherent in the nature of the relationship between such parties by such franchise."

In light of auto industry history, however, this reference to "equities" of the dealer might well include the dealer's right to be free from competition from added franchise dealers. As I understand it, one major auto manufacturer's policy now is to allow appeal to its dealer relations board decisions of its sales managers which affect "the equity of the dealer."²² Within this language, appointment of an additional dealer in an existing dealer's area has consistently been a matter warranting appeal. Thus, under H. R. 11360 as introduced, establishment of any new dealer might, if it hurt an existing dealer, permit suit. The result could well be to freeze present pattern of dealer distribution.

This construction of the term "equities" finds support in testimony of counsel for the National Automobile Dealers Association before this committee. Under-scoring the relevance of trade practice and custom to appraising this language, counsel for NADA stated:²³

"I think very definitely that the normally deducible inferences from the language employed in the franchise is an ingredient of the franchise." Further, he stated, in response to a question about the location of so-called "stimulator" dealers:²⁴

"It is inherent in a franchise when it is granted by the manufacturer to a dealer, that based upon the number of car dealerships that is anticipated, that that dealer is to expect the business opportunity in order to meet that standard of sales performance."

More flatly, in reply to the question, "Would the establishment of a stimulator dealer by a manufacturer ipso facto be regarded as bad faith under this bill?" NADA counsel said, "I would say 'Yes'."²⁵ Against this background, the possibility that this language might hamper location of new dealers becomes real.

Even more broadly, this phrasing could tend to perpetuate existing dealers in business—regardless of market pressures—and, indeed, require each manu-

²² Analyzing this phrasing, we have searched prior uses of like language to determine its intended meaning in the bill. The sole relevant prior use we have found is in a document entitled "The General Motors Dealer Relations Board Policy and Procedure." This document, described as "a message to the divisional and dealer organizations of the car and truck divisions of General Motors Corp., from H. H. Curtice, president." This document, reprinted on pp. 4383-4386 of the hearing before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, U. S. Senate, December 9, 1955, was sent to all General Motors dealers around June 1, 1954. It states that a dealer relations board "may refuse to hear any case where in its judgment, *the equity of the dealer is affected to such a minor degree as not to justify the time and attention of the board.*" [Italics added.]

²³ Verbatim hearings, p. 225.

²⁴ Ibid., p. 223.

²⁵ Verbatim transcript, p. 221.

facturer to guarantee against unprofitable operation or depletion of investment. The Senate report, for example, emphasizes throughout this bill's concern for the dealer's franchise investment. After remarking on the "substantial investment of his own personal funds by the dealer in the business," the report, on page 2, states, the dealer "becomes in a real sense the economic captive of the manufacturer." Building on this analysis, the report concludes (p. 5):

"The economic fact underlying the relationship between manufacturer and dealer justify the imposition upon the factory of duties of fiduciary or quasi-fiduciary character * * *. Under these circumstances, it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character."

With this language uppermost it may well be that the Senate committee at least intended that dealers' "equities" include some safeguard for dealers' margins of profit or investment. Section 3 of H. R. 11360 would apply this standard to any "terminating, canceling, or not renewing" of a dealer's franchise.³² Any failure to renew, it seems clear, might drastically deplete a dealer's investment. Similarly, an increase in auto production might mean harder competition among dealers but a lower return for any one dealer. From this it follows that these proposals could oblige a manufacturer, on pain of a suit for damages, to gear his production and distribution, not to market stimuli, but to preserve each dealer's profitable investment.

Such possibilities for restraint on the free development of competitive auto distribution one amendment now before this committee goes a long way toward removing. This amendment would strike from H. R. 11360's definition of "good faith" the language following the word "intimidation" on line 2 of page 3. By that amendment section 1 (e) would read:

"The term 'good faith' shall mean the duty of each party to any franchise and all officers, employees, or agents thereof, to act in a fair, equitable, and non-arbitrary manner toward each other so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party."

Adoption of this amendment might well eliminate many of the anticompetitive possibilities inherent in the present "equities" language.

To further clarify this "good faith" obligation, this committee might wish to consider amending, in addition, H. R. 11360's definition of "franchise." By section 3 of H. R. 11360 (sec. 2 of the Senate-passed bill), a manufacturer would be liable for failure "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing this franchise * * *." The term "franchise," however, is defined by both bills to include not only the written "agreement" or "contract," but also any "understanding or arrangement between any automobile manufacturer and any automobile dealer." To insure that the language "understanding or arrangement" does not include present trade understanding perhaps limiting, for example, location of new dealers, this committee may wish to consider amending section 1 (b) to eliminate the words "understanding, or arrangement" on page 2, lines 7 and 10.

Were these amendments, along with others typed on the draft your staff circulated this morning, to be adopted, the bill's prime effect would then be to give some chance for recompense to any individual dealer damaged by a manufacturer's "coercion, intimidation, or threats of coercion or intimidation * * *." The language "fair, equitable, and nonarbitrary," then, would be merely a guide to the essential judicial determination—whether "coercion" or "threats" of same have in fact occurred.

So amended, the bill would supplement existing antitrust remedies a dealer may have against a manufacturer who conspires with another dealer to drive him out of business.³³ As the Chairman of the Federal Trade Commission wrote this committee on July 3, 1956:

"A practice of using coercion, intimidation, or discrimination to induce dealers to order or accept any product has long been held to be an unfair method of competition and an unfair practice violative of section 5 of the Federal Trade Commission Act. The Commission has brought proceedings against such prac-

³² Acknowledging the possibility that a manufacturer may fail to renew a dealer contract only on pain of a suit for damages, the Senate report, p. 6, states: "The bill would not permanently bind a manufacturer to his dealer. The dealer in case of nonrenewal has no right to require continuance of the relationship. He merely has a right to damages if the factory failed to act in good faith in refusing to renew the franchise."

³³ Cf. *Webster Motor Car Co. v. Packard Motor Car Co.*, 135 F. Supp. 4 (D. C. Md.); cf. *Schwinn Motor Company v. Hudson Sales Corporation*, 138 F. Supp. 899 (D. C. Md.).

tices whether followed by automobile manufacturers or others. Of course, all of such proceedings by the Federal Trade Commission must have in them the element of public interest. They were designed to stop practices thought to be injurious to the public rather than to determine the question of damages to private parties for wrongs claimed to have been done."

Thus limited to affording an individual dealer some damage remedy in cases of "coercion, intimidation, or threats of" same in the course of performing franchise contract obligations or in renewing such contracts, this Department, from an antitrust standpoint, would have no objection to the bill.

The CHAIRMAN. Our next witness is the vice president of the Ford Motor Co., Mr. William Gossett.

STATEMENT OF WILLIAM T. GOSSETT, VICE PRESIDENT AND GENERAL COUNSEL, FORD MOTOR CO.; ACCOMPANIED BY R. S. McNAMARA, VICE PRESIDENT, FORD MOTOR CO., AND GENERAL MANAGER OF THE FORD DIVISION; WRIGHT TISDALE, ASSISTANT GENERAL COUNSEL; AND RICHARD B. DARRAGH, ASSOCIATE GENERAL COUNSEL, FORD MOTOR CO.

Mr. Gossett. Mr. Chairman, may I introduce my associates, Robert S. McNamara, vice president of the Ford Motor Co., and general manager of the Ford division; Mr. Wright Tisdale, assistant general counsel, Ford Motor Co.; and Mr. Richard B. Darragh, associate general counsel.

Mr. Chairman, I have a prepared statement on behalf of my company all of which I should like to go into the record. I do not intend, however, to read the entire statement unless the committee wishes me to do so.

It will conserve the committee's time, I think, to permit me to read those portions of my statement that contain our views on specific sections of the bill, and in those portions I have set forth our views as clearly and as concisely as I could.

(The statement referred to is as follows:)

STATEMENT OF FORD MOTOR CO.

My name is William T. Gossett. I am vice president and general counsel of Ford Motor Co. I appreciate the opportunity to appear before this committee to present our views on H. R. 11360 and S. 3879.

We at Ford Motor Co. like to think that we are responsible and progressive citizens. We are reluctant, therefore, to take a flat position in opposition to well-intentioned legislation. I must report to you, nevertheless, that we are deeply concerned about these bills. On the surface they have a disarming appearance of fairness and harmlessness. But analysis discloses that either of them, if enacted into law, would have serious adverse effects, not only upon the industry but upon the public as well.

We are fearful of the impact that the proposed legislation may have upon dealers, upon the millions of employees and stockholders of our own and supporting industries, upon the consuming public, and upon the economy in general.

The principles upon which the bills are based could be applied to many other lines of business. If the proposed legislation is enacted, therefore, there will be demands for similar legislation across the economy. Indeed, Senator O'Mahoney has expressed the opinion that the principles underlying these bills should be extended to other industries.

Under the circumstances, we sincerely hope that the Congress will not feel compelled during the closing days of this session to act hastily on these far-reaching legislative proposals.

Our criticism of these bills does not stem from any lack of awareness of the problems of the manufacturer-dealer relationship, or any unwillingness to seek solutions to those problems. We are aware that there are problems, and we are

taking steps to meet our responsibilities in finding solutions. We are grateful to those committees of the Congress that have held hearings and have made us aware of some practices in our industry that deserved immediate attention at the top management level. We do not intend to imply that we have devised satisfactory means for solving all of the complex and diverse problems of the manufacturer-dealer relationship. In any industry human difficulties and transitory injustices arise in spite of the best efforts of men of good will, and the provisions of the proposed legislation would appear on the surface to offer a simple solution of some of these problems.

We share the objective of good faith in the industry, but we are convinced that the bills before this committee will not achieve it.

To make my points clear I must relate briefly some of the unique characteristics of our complicated industry.

The business of manufacturing automobiles is exacting, intricate, and hazardous. We must commit hundreds of millions of dollars to plans projected far into the future. We are forced to visualize now the types of vehicles that the public will want and how many they will buy 3 to 5 years hence, and we must make enormous commitments now for facilities to produce those automobiles.

We must have split-second timing in our business, not only in our own operations, but in the operations of our thousands of suppliers. We must have vehicles in the hands of our dealers at a specific time and continue to supply each dealer upon his order throughout the year.

To be able to supply our dealers we place orders with our suppliers many months in advance of production of the first car. Later, we set our production schedules, generally for 5 months in advance, only 1 month of which is covered by dealer orders. The other 4 months are at our risk. Our fixed costs are so large that we must make and sell many hundreds of thousands of vehicles before we even reach the break-even point.

In the process of planning and production there is a constant battle to bring down costs. This is a difficult matter for, obviously, cost is directly related to the volume of production; and volume, in turn, is dependent upon the number of cars that can be sold. Thus, in setting the price on the first car to come off the production line, we must base that price upon our best estimates of the number of cars to be sold. In other words, we price, let us say, the millionth car and that is the price for which we sell the first car. Our price, then, is determined by a volume which may or may not be realized. That is where the dealers come in.

Authorized dealers constitute the only outlet for the manufacturer's products to the consuming public. If the dealer fails in his job of selling, there are repercussions all along the line. His failure is felt in his own profits, in the profits of the manufacturer, in the prosperity of the supplier, in the paycheck of the employee, in the dividend of the stockholder, and in the economy as a whole.

The entire sales destiny of the manufacturer is in the hands of its authorized dealers. Thus, it is vital to the manufacturer that it have the right to choose who shall represent it in the first instance and who shall continue to be accorded the franchise. Without this right, the manufacturer no longer would have an effective system for the distribution of its products.

The right to be an authorized dealer is valuable because the dealership is the only place in most communities where the consumer can buy the manufacturer's products and obtain authorized service. Although there often are a number of authorized dealerships of a given make of vehicle in the larger metropolitan areas, these dealerships nevertheless are limited in number compared to the number there would be if the manufacturer chose to sell to all who elected to handle its products.

By the nature of their business, automobile dealers must make investments in facilities and acquire the personnel necessary to operate establishments suitable for merchandising new and used vehicles and performing adequate service. Dealers have been willing to make these investments because of the value to them of the right to represent the manufacturer. Indeed, generally there are more applicants for dealerships than there are openings available.

Dealers have been willing to risk their capital and time because of the likelihood of a long and profitable association with the manufacturer. In the case of Ford Motor Co., more than half of the Ford dealers have been with us for more than 20 years. If their association is terminated for any reason, dealers know their investment will be liquidated on a fair basis. General practice in the industry and the current terms of our sales agreements assure such equitable liquidation.

On the other hand, it has been possible for the manufacturer to place its commercial fate at each dealer location in the hands of a single dealer only

because of the nature of the relationship. The relationship has enabled the manufacturer to counsel with the dealer in all phases of his business—to help him to analyze market conditions and establish sales objectives, to aid him in providing service facilities and personnel, to assist him in reducing his costs and increasing his efficiency, and generally to aid him in serving his customers—all to the end that his sales will increase and his business succeed. But the nature of the relationship is such that the manufacturer must be in a position, as a last resort measure, to replace the dealer if, in spite of its best efforts to help the dealer, he fails to represent the manufacturer adequately in the area. The reasons that motivate a manufacturer in making a change in its representation at any given dealer point are not confined to poor representation by the existing dealer. It may appear, for example, that a particular locality will no longer support profitably the number of authorized dealers currently located there. Conversely, an additional dealer may be needed in a particular territory. The appointment of an additional dealer may disappoint the existing dealer so much that he considers the change so detrimental to his interests as to be almost the equivalent of termination. Decisions of this kind must be made, and they are vital to the strength and growth of the industry.

This brings me to the two bills now before the committee. I shall first discuss H. R. 11360, and then take up the provisions of S. 3879, as it was passed by the Senate.

H. R. 11360

This bill imposes a statutory duty upon automotive manufacturers to act in "good faith," as defined in the bill, in all dealings or transactions with their dealers. It authorizes each dealer to sue his manufacturer for double damages, cost of suit and attorney's fee for failure of the manufacturer "to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer."

The bill requires a few general comments before considering the many knotty problems raised by its specific language.

The class legislation aspects of the bill.—In our opinion the bill is seriously discriminatory. It singles out the automotive industry and imposes unique requirements and burdens upon automotive manufacturers that are not imposed upon manufacturers in other industries whose products are sold through franchised dealers, and which compete with automobiles for the consumer's dollar. No justification for such treatment of the automotive industry has been demonstrated.

In addition, the bill imposes a fiduciary duty upon automotive manufacturers toward their dealers, but imposes no corresponding obligation on the dealers toward the manufacturers or, more importantly, toward the public. Thus, the interests of the manufacturers are subordinated to the supposed interests of the dealers, and the interests of the public are completely ignored. No argument can justify one-sided legislation that requires "good faith" treatment of dealers by manufacturers on the one hand, but imposes no corresponding duty on the dealers in their dealings with the manufacturers and with the public on the other.

The major premise of the bill is that automotive dealers deserve special protection because they can buy their cars only from the manufacturers that "enfranchise" them. We do not regard the premise as sound, but if it is, it could be contended with equal force that the manufacturers who sell only to authorized dealers, and each member of the public, who normally can buy new cars only from authorized dealers, also should be entitled to sue for double damages and attorney's fee based upon the claim that the dealer has not dealt in "good faith" with, or has failed to take full account of the "equities" of the manufacturer or that member of the public.

The class aspects of the proposed legislation also raise a serious legal question. In exerting its power under the commerce clause, Congress is exercising its police power for the benefit of the public. It is fundamental that in justifying proper legislative exercise of police power (a) there must exist a real evil adverse to the general public interest, (b) the legislation must be reasonably calculated and necessary to correct that evil, and (c) the legislation must not, under the guise of protecting the general health, safety, or welfare, actually be designed to benefit some class or group.

We submit that the bill meets none of these tests. No evil adverse to the general public interest has been demonstrated that would warrant singling out the automotive industry or the automotive manufacturers for treatment not imposed upon others.

The punitive nature of the bill.—As the Senate report explained with respect to S. 3879 which, when reported to the Senate was the same as H. R. 11360, the double damage provision of the bill admittedly is a punitive measure. In this respect, it is a radical departure from our traditional concepts of remedies appropriate to commercial controversies between private parties.

Traditionally in our judicial system, a person claiming injury by another is entitled to sue for compensation for the harm done him, but for no more. It is only when the overriding interests of the public are directly affected that punitive and penalty measures are deemed appropriate. Thus, crimes and misdemeanors bring the penalty of fine or imprisonment; conduct prohibited by measures designed to protect the public interest may be penalized by fines or extraordinary damages; and in a restricted class of cases brought by private suitors to recover damages and to vindicate a public wrong, punitive damages may be awarded as a deterrent against such conduct in the future and to supplement enforcement by public authorities.

This distinction has been carefully preserved under the provisions of the antitrust laws, which permit suits by private parties for triple damages. The familiar principle was expressed as follows in *Arthur v. Kraft-Phenix Cheese Co.* (26 F. Supp. 824 (D. C. Md., 1937)), an unsuccessful private suit for triple damages brought by a terminated dealer against a manufacturer:

"It is well established that the principal purpose of enacting the antitrust laws (15 U. S. C. A., sec. 1 et seq.) was to protect the public; and the right of an individual to sue for personal damages sustained is incidental and subordinate. That is to say, Congress was concerned with preventing activities in interstate commerce which were prejudicial to the public and, therefore, the scope of the act, even in authorizing the personal right of private suit by a person particularly injured was only incidental to the main object and the private suits are maintainable only when the defendant's conduct prejudicially affects the public generally as distinct from purely personal or private damage."

The lack of public interest served by the bill.—In our opinion no public interest has been shown in legislating with respect to the day-to-day transactions between automotive manufacturers and their dealers, or in the termination and replacement of dealers whose representation has not been adequate. If the public has any interest in these transactions, it lies in the direction of encouraging the manufacturers to maintain the efficiency and high standards of their dealers and thus to promote effective merchandising of their products at prices that give to the public ever-increasing values and quality service to those products.

The thrust of H. R. 11360 is quite the opposite. As we shall demonstrate, it would handicap the manufacturers in maintaining high volume and low costs, and in achieving high standards of service to the public. Thus, the interests of the public, far from being advanced, would be threatened by the passage of the bill.

Section 1 (e)

Turning now to the specific language of the bill, the first part of section 1 (e) defines the term "good faith" as "the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation, * * *"

Ford Motor Co. is opposed, of course, to coercion or intimidation of any of its dealers. It is the intention of our company always to act fairly and equitably toward our dealers.

The proposed statute is unnecessary, and would confuse the present law. The Honorable John W. Gwynne, Chairman of the Federal Trade Commission, testified before the Subcommittee on Automobile Marketing Practices of the Senate Interstate and Foreign Commerce Committee on June 21, 1956, in connection with the Monroney bill (S. 3946), that coercion and intimidation already are prohibited by section 5 of the Federal Trade Commission Act, and that the singling out of the automotive industry for specific legislative prohibition of "coercion" and "intimidation" might well lead the courts to question the illegality of the practice in other industries. The Department of Justice, in its letter of June 25, 1956, to the chairman of this committee expressed similar views with respect to H. R. 11360.

If we are prohibited by existing law from treating our dealers unfairly, inequitably, or arbitrarily, and from coercing or intimidating them, the proposed legislation is unnecessary. If, however, the proposed legislation creates new law, then it is essential that the meaning of its terms be clearly defined. And the definitions should preserve expressly the right of the manufacturer to

employ the normal persuasive sales efforts that are inherent in and necessary to the seller-purchaser relationship. If this is not done the manufacturer could be seriously inhibited and restrained from engaging in ordinary commercial communication with the dealers.

If the present distribution system is to be continued, manufacturers must have the right to exert influences upon the dealers with respect to matters that affect the reputation of the manufacturers and their products with the public. But, under the present phraseology of the bill, if the manufacturers continue to exert normal influence upon the sales and service activities and the trade practices of their dealers, they would do so at their peril—the peril of being sued for damages on the ground that they are coercing their dealers or treating them unfairly or inequitably. In *Ford Motor Company v. United States* (335 U. S. 303 (1948)), the Government in its brief in the Supreme Court took the position that mere recommendation by a manufacturer would constitute coercion of a dealer simply because of the nature of the relationship between them. We did not and do not now agree with that position, but here is the argument made in one of the point headings in the Government's brief (p. 32):

"B. In view of the dealers' ready susceptibility to factory influence, the practice of recommending a factory-favored or factory-affiliated finance company, as well as the practice of joint solicitation of dealers by agents of the factory and of the favored finance company, constitute coercion and hence violate the Sherman Act."

Under that point heading the Government said, among other things (p. 36):

"* * * If Ford is permitted to 'persuade' its dealers to use a preferred finance company, it will find a way to make 'persuasion' effective. The difference between a threat and 'persuasion' may involve such finely drawn subtleties (sic) of language and conduct as to make the two indistinguishable. This is particularly true in a situation such as is involved here, where the dealer is peculiarly subject to the slightest hint from the factory."

Congress considered the problem to be inherent in a peculiar relationship such as the employer-employee relationship when it passed the Taft-Hartley Act. Decisions by the National Labor Relations Board under the Wagner Act had the effect of using as evidence of coercion expressions of opinion and attempts at persuasion by employers. To avoid this, Congress, while providing in section 8 (a) (1) that it is an unfair labor practice for an employer to "interfere with, restrain, or coerce employees," further provided in section 8 (c) as follows:

"(c) The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit."

No provision comparable to the saving clause contained in the Taft-Hartley Act is found in H. R. 11360. Indeed, there is no provision that would permit insistence upon a requirement by the manufacturers that the dealers maintain sufficient stocks of the manufacturers' products in order to afford adequate representation and to assure prompt and efficient service to the public. Since, as we have pointed out above, the dealers are the only retail sales outlets for the manufacturers' products, this is an essential element of the business.

The necessary effect of the language of the first part of subsection (e) of section 1 of the bill would be to deprive the manufacturer of an effective voice in the merchandising of its products—a voice that over the years has proved to be essential to progress in the industry. The combination of vague language and heavy penalties inevitably would tend to result in deceleration of the entire sales and manufacturing tempo of the industry. This, in turn, would lead to higher prices to the public and to reduced employment, not only by the manufacturers but also by their thousands of suppliers and by the dealers themselves.

In passing, it should be noted that the language of the first part of subsection (e) is so loose as to fail to indicate from what sources the manufacturer would be required to protect the dealer from "coercion" and intimidation." In view of the penalties imposed upon the manufacturer under the bill, it would seem to be only fair and proper that the manufacturer's duty be sufficiently defined so as to permit him to determine what that duty is. This particular problem was noted by this committee's counsel, who suggested an appropriate amendment during the hearings (p. 49).

The latter part of subsection (e) of section 1 of the bill imposes on the manufacturer, as part of its "good faith" obligation to its dealers, the duty—

"* * * to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and the automobile manufacturer."

No key is provided to the amorphous standard of this new duty.

The principal complaints of the public and of the dealers as well in recent years concerning automobile marketing have centered around various malpractices. They include new car bootlegging, misleading advertising, unethical selling tactics, and substandard warranty and repair service. The proposed legislation would tend to perpetuate these practices, to the detriment of the industry and the public.

In effect, new car bootlegging amounts to promiscuous wholesaling of new cars by authorized dealers. Both the manufacturers and most dealers decry this practice because it upsets the distribution plans of the manufacturers and tends to harm the business of the authorized dealers in the areas where the cars are ultimately offered for sale to consumers. More than that, it violates the public interest, because the cars often are sold without proper preconditioning and under the misrepresentation that they are new cars, whereas, in fact, many of them have been driven many miles.

The Senate report relating to the O'Mahoney bill (S. Rept. No. 2073) points out that one of the purposes of the bill is to assure the dealer that he may "obtain delivery of the type and volume of cars ordered." If this is the intention of the bill, one of the equities of the dealer, it might be claimed would be his right to order and receive from the manufacturer such number of cars as he may desire, whether he intends them to be sold to retail customers or at wholesale through bootlegging channels.

Since bootlegging is not in violation of law and is not contrary to the specific provisions of any of the sales agreements now in use in the industry, the bill might well be construed to include as one of the dealers' equities the right to obtain cars for bootleg purposes. Similarly, the right to engage in advertising and promotional schemes that have been the subject of vigorous complaints by dealers and the public might well be regarded under this bill as being among the equities of the dealer.

In the interests of the public, the welfare of the dealers, and the reputation of the products, the manufacturers should be able to employ all legitimate means at their command to discourage these malpractices.

It would be most unfortunate, we think, to enact into law a bill that would tend to preserve and protect many of the evils against which the dealers and the public have complained the most. The combination, however, of the sweeping language of the second part of subsection 1 (e) and the inhibiting language of the first part of the subsection might well have that effect.

That the public interest requires that the manufacturers have the power and ability to take reasonable steps to curb malpractices on the part of dealers is illustrated by the preliminary report of the Subcommittee to Investigate Questionable Trade Practices on Automobile Dealers (the Macy committee). This report read in pertinent part (Cong. Rec., Dec. 31, 1948, p. A5646) :

"From the investigation which we have made and from an analysis of the complaints we have received throughout the country, it appears that abuses in the automobile retail business fall into the following main categories :

- "1. Disregard of order lists.
- "2. Demanding premium payments.
- "3. Requiring trade-ins.
- "4. Undervaluation of trade-ins.
- "5. Loading cars with unwanted accessories and extras.
- "6. Discourteous treatment.

"The committee feels that these abuses could be corrected without delay either by cooperation between the dealers and the manufacturers or by the insistence on the part of the manufacturers that the dealers conduct their business pursuant to a code of fair business practices. The committee feels that the manufacturers have not been sufficiently diligent in policing their own industry. While they have sought to soothe the public and build goodwill by announcing their policies relating to fair distribution and sale of automobiles, most companies have made very little real effort to see that these policies were put into practice.

* * * * *

'Automobile manufacturers, by veiled reference to antitrust cases, take the position that there is nothing they can do to correct the abuses which exist in the industry. However, I feel that their position is open to serious question. I know of no Federal law, regulation, or decision which forces automobile manufacturers to renew the franchise of any dealer whose sales practices injure the

reputation and good will of the manufacturer and bring his product into public disrepute."

The problems with which the Macy committee was concerned stemmed, of course, from the sellers' market that then prevailed. The problems now current in the industry arise largely from the buyers' market in which we find ourselves. But the principle, as it affects the interests of the public, ethical dealers, and the manufacturers, is the same.

It would be unfortunate, indeed, if an effort to confer what we believe to be doubtful, short-term benefits upon automobile dealers were, at the same time, to have the effect of curbing the ability of the manufacturers to protect the interests of the public, ethical dealers, and the reputation of the products.

Another serious question under subsection (e) is whether additional dealers could be appointed by the manufacturers from time to time as conditions might require. The new dealers, of course, would compete with existing dealers. Claims, however unfounded, certainly will be made that appointments of new dealers diminish the equities of existing dealers. This dangerous aspect of the proposed legislation was pointed out by the Department of Justice in its letter of June 25, 1956, to the chairman of this committee. The Department of Justice noted that newcomers might be deprived of their fair chance to enter the automobile retailing business, and competition would be restrained in the distribution of new cars.

The great uncertainty and numerous difficulties created by the proposed legislation with respect to new and additional dealerships were highlighted by testimony received by this committee on the opening day of the hearings. It was apparent that even the sponsors and proponents of the legislation were in disagreement on its interpretation. For example:

(a) Senator O'Mahoney stated (p. 42): "There is nothing in this bill that would prohibit a manufacturer from setting up a new dealer in any area; there is nothing whatsoever in the bill that would do it." Again, the Senator said (p. 69): "The establishment of a new dealership by the factory, thus providing more competition for the dealer, would not give the dealer a right of action under this bill."

(b) NADA's executive vice president, Frederick J. Bell, agreed with this position in a colloquy with the committee counsel; but then he suggested that installation of a "stimulator dealer" would contain an "element of bad faith" (p. 218). Admiral Bell admitted, however, that he could not define a "stimulator dealer," and he conceded that he could not say when a new dealership was actually being placed in competition with an established dealership. This, he said, was essentially a matter of "how close is close" (p. 222).

(c) NADA's legislative counsel, Rowland Kirks, answered flatly that any appointment of a stimulator dealer would be, ipso facto, bad faith on the part of the manufacturer (p. 221). In his view, the manufacturer would be liable if a second dealership sold more cars in proportion to its capital investment than the original dealership (p. 224). Thus, according to Dr. Kirks, if a new dealership does a better job than an established dealership with which it is in competition, then the established dealership would have a cause of action against the manufacturer.

We think it fair to conclude that if the experts who appeared before this committee could not agree on such a basic aspect of the pending legislation, it is illogical to assume that juries selected from the general public would be able to reach consistent and fair decisions. The courts would have equal difficulty in interpreting the intent and purpose of the law against the background of such a contradictory legislative history, made even more confused in the light of the debate on the Senate floor.

Another serious aspect of this part of the bill is that the duty on the part of the manufacturers "to preserve and protect all the equities of the automobile dealer" might well be construed to include the requirement that the manufacturers, on pain of damages, gear their production and pricing at such levels as to preserve each dealer's profitable investment. This danger also was pointed out in the letter of the Department of Justice to the chairman of this committee referred to above.

Such an interpretation, particularly when coupled with the repressive effects of the vague and indefinite language of the first part of subsection (e), ultimately would lead to reduced volume of production and sales. The high values which the automotive industry presently offers to consumers are the result of high-volume, low-cost production. Reduction in volume could only be accompanied by higher costs, which necessarily would be translated into either higher prices or lower values to the consuming public.

Section 2

Although the corresponding section 2 was deleted from S. 3879 on the Senate floor, the reason given was that the section was redundant. It appears, therefore, that any observation directed to section 2 of H. R. 11360 would be equally applicable to the bill with section 2 deleted.

Section 2 of the bill would impose upon the manufacturer the duty to act in good faith in all dealings or transactions with its dealers. In view of the definition of "good faith" contained in subsection (e) of section 1, section 2 would seem to be an effort to regulate and control the private business relationships between the manufacturers and their dealers, with the administration of such regulation and control in the hands of the Federal courts. We know of no instance of such regulation of private industry, except in times of national emergency. No justification has been shown for such a far-reaching proposal.

The proposed legislation might well result in many questions of business judgment for the courts, questions which the courts are not set up to handle and which traditionally are not submitted to them for determination. The courts would be required to supervise many of the working relationships between the manufacturers and the dealers. The judgments of the courts and juries would be substituted for the business judgments of the dealers and the manufacturers. And insofar as the judgments were made by juries, it would be impossible to secure precedents that could be relied upon as a basis for future conduct in the industry.

Thus, for example, the courts might be required to determine whether the manufacturers should have a program of sales incentives or allowances to dealers to assist them in disposing of vehicles at the end of a model run, and if so, the type of program and the amounts of the incentives or allowances. They might be required to determine whether the manufacturers should have programs to reimburse dealers for warranty and service and, if so, the nature and details of the programs. They might be required to determine whether the manufacturers should have programs designed to assist the dealers in disposing of obsolete parts and, if so, the nature and extent of such programs. They might be required to pass upon the fairness of the manufacturers' prices to their dealers and the list prices suggested by the manufacturers. Although this may not have been the intent of those who drafted the bill, nevertheless it could be the effect of section 2. Such an intrusion upon private business relationships would be foreign indeed to American concepts.

Section 3

Section 3 of the bill would grant to automobile dealers the right to sue manufacturers for double damages, costs of suit, and an attorney's fee: "by reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer."

This section would create a cause of action for punitive damages for failure of an automotive manufacturer to observe the requirements of good faith, as defined in subsection (e) of section 1, "in performing or complying with any of the terms or provisions of the franchise." Does this mean that the manufacturer could be held to have breached its duty of good faith even though it complied completely with all of its contractual obligations to the dealer under its sales agreement? Both the chairman of this committee and Senator O'Mahoney have made statements to this effect.

On page 2 of the transcript of these hearings, on July 2, 1956, the chairman of this committee said:

"Under the bills, if the manufacturer fails to act in good faith, the dealer is given the right of court review to determine this issue, notwithstanding any provisions of the franchise agreement."

A similar statement is attributed to Senator O'Mahoney in the May 22 issue of a bulletin of the Los Angeles Motor Car Dealers Association.

If this startling innovation in the law of contracts were adopted by the courts, a new and wholly uncharted dimension of obligation would be imposed upon the manufacturers. They never could rely upon the rights and obligations provided in the sales agreements. For example, the manufacturer might be prevented from requiring the dealer to perform such a fundamentally important obligation as maintaining adequate facilities and personnel to provide essential warranty of quality and adequate repair services for customers, as specified in the sales agreement.

Another consequence of section 3 would be that the manufacturer, with whose decision concerning a franchise a jury might subsequently disagree, would be subject to a heavy penalty of damages for his decision. In view of the extraordinarily vague and ambiguous language used in the definition of "good faith" in subsection (e) of section 1 of the bill, the manufacturer thus might be so inhibited in its decisions that inefficient dealers would, in effect, be featherbedded into their franchises.

Here, again, there is disagreement among Members of Congress as to whether admittedly inefficient dealers could be terminated, as a matter of law, under the proposed legislation. For example, the chairman of this committee expressed concern that the bill might prohibit a manufacturer from terminating an inefficient dealer who, despite his poor performance, might be trying in good faith to do a good job (p. 128). Congressman Multer agreed that the proposed legislation might have this effect, stating (p. 129): " * * * the manufacturer would have lost his right under the Senate version of the bill to cancel, regardless of inefficiency, if the dealer is acting in good faith."

At a later point, however, Congressman Multer said: "Let us agree that where the inefficient dealer—there is no question about his inefficiency—the manufacturer has the right to cancel out and does cancel out; there is no lawsuit." The chairman agreed (p. 132). We assume from this that the speakers meant that the manufacturer ought to win any such suit, as a matter of law.

In a final reversal, however, Congressman Multer decided that if the bill passes and is ruled constitutional, "you would be able to tell these manufacturers, once you issue a franchise, that is a franchise in perpetuity" (p. 143).

If this is the result of the proposed legislation, we agree with the observation of the chairman of this committee (pp. 129-130) that it would be a barbarous bill—barbarous because of its serious consequences not only to the vitality of the industry, but to the entire economy of this Nation.

We know of no instance in the history of private industry in this country where such fundamental and essential rights have been taken from one segment of an industry in an effort to bestow a benefit upon another segment of that industry to the detriment of the public as a whole.

S. 3879, AS AMENDED IN THE SENATE

The O'Mahoney bill was amended on the floor of the Senate on June 19, 1956, by deletion of section 2 and amendments made in subsection (e) of section 1, containing the definition of "good faith," and section 3, authorizing double damage suits. Although these amendments create an appearance of fairness to the manufacturers as well as the dealers, they cured none of the basic defects of the bill. In our opinion, the bill still is basically unsound and is subject to most of the objections that were applicable prior to amendment.

The Senate's amended definition of the term "good faith" appears on its face to create mutual obligations and responsibilities for the dealers and the manufacturers. But the fact that the good faith of the dealers can be called into question only as a defense to an action by a dealer, and not as the basis for an action originated by a manufacturer, discloses that the effect of the amended bill is not to establish a true mutuality of obligation.

As I have indicated, the elimination of section 2 of the original bill, for the reason that it was redundant, removed no substantive objection to the bill.

The amendment of former section 3 to provide for the recovery of compensatory damages only, rather than double damages, is an improvement, but it by no means eliminates the objections that I have outlined earlier in this statement with respect to section 3 of H. R. 11360. The constant threat of suits for compensatory damages would have virtually the same stifling effects as suits for double damages.

Finally, there is no definition in the bill of the term "compensatory damages"; and there is no Federal common law to which the courts could turn for a definition. Thus, resort would have to be made to the law of the States in which the Federal courts sit, and varying definitions could result.

Constitutional questions

We believe that the proposed legislation raises a number of serious constitutional questions that should receive more thorough consideration than has been possible within the hurried schedule of the bills in Congress. These questions

include, in addition to those raised by the class aspects of the proposed legislation, the objections that the proposed legislation would:

- (1) vitiate the terms of existing contracts, freely arrived at between private parties, and nullify the rights of the parties under them;
- (2) restrict the right of private parties to contract freely in the future and to choose with whom they will enter into and continue business relationships;
- (3) fail to meet the test of statutory certainty because of the vagueness of its language and the uncertain nature of the duties and obligations that it imposes; and
- (4) involve improper delegation of legislative authority by the Congress to the courts because of the generality and ambiguity of its terms and the lack of definiteness of the new statutory duties imposed upon the parties.

CONCLUSION

Proponents of the proposed legislation have said that its objectives already have been attained by voluntary action of the manufacturers. Their stated purpose in seeking legislation is "to help create safeguards that will perpetuate, by law, actions already taken in Detroit."¹ In other words, they seek by law to protect gains already made and thus to preserve the atmosphere of "good faith" in manufacturer-dealer relations in the automotive industry.

As I have said, we share wholeheartedly the objective of continued good faith in the industry. It is our conviction however, that the legislation, far from achieving that objective, would have the opposite result. Indeed, its principal effect would be continually to stir up litigation and create hostility between the dealers and the manufacturers.

This seems to us self-evident from the terms of the proposed legislation itself. Its stated purpose is to provide a basis for and facilitate the institution of suits by the dealers against the manufacturers. The inevitable consequences would be, we think, to encourage the parties to regard themselves as legal antagonists rather than as participants in a business venture.

Legal counsel for dealers would be compelled to advise their clients to "keep books" on the manufacturers in an effort to create evidence to be used as a basis for possible future suits. Conversely, the manufacturers would be obliged, as a matter of self-protection, to build a careful defense record concerning every dealer. Thus, a litigious atmosphere would replace a climate of cooperation and mutual endeavor, and the parties would be distracted from their main purpose, namely, the production, sale, and servicing of automobiles.

If the proposed legislation were enacted, it would be necessary also for the manufacturers to take every available means of protecting themselves against charges of bad faith. One method would be to write into the sales agreement detailed descriptions of every conceivable obligation and responsibility of the dealer, to the end that the manufacturer could continue to operate in a normal manner. Such provisions would at least make it difficult to prove lack of good faith on the part of the manufacturer for simply insisting on the performance by the dealer of specific provisions in the sales agreement. On the other hand, such detailed provisions would import into the sales agreement restrictions and rigidity that would impair the ability of the dealer and the manufacturer to adjust their relationships in the light of constantly changing circumstances.

I have discussed in some detail the adverse effects that the proposed legislation would have upon the public, the dealers, and the manufacturers. In addition to the more obvious and immediate effects that I have just described, the proposed legislation, in our opinion, would have these results:

It would tend to perpetuate bootlegging and other unethical marketing practices by some authorized dealers; it would tend to undermine the authorized dealer system; it would decrease the sales and production of automotive vehicles; it would increase unemployment in the automotive and supporting industries; and it would set into operation forces that would increase the prices of motor vehicles and service to the public.

This committee is familiar, I think, with most of the steps that have been taken by the industry to solve the problems that beset it. I shall not describe all of them here. In addition to announcing a new and alternative form of 5-year contract to our dealers, which will be terminable only for cause, we at Ford Motor Co. have established a dealer policy board under the chairmanship of Benson Ford. The board will devote all of its time and attention to the improvement

¹ Frederick J. Bell in the June 1956 issue of NADA magazine.

of our relations with dealers. To this end it will, among other things, create and maintain clear lines of communication between our dealers and the top management of our company.

Other steps are in the process of adoption. We have distributed forms of "Suggestionnaires" among our dealers, which they were not required to sign, and in which they have been asked to make candid comments concerning the improvement of company-dealer relationships. This information and that to be solicited in the future will provide a sound basis for considering what further steps should be taken to improve the relationships.

Over the years the Congress has indicated a clear policy on legislation dealing with the commerce of the Nation. That policy has been to refrain from enacting legislation affecting commerce unless it is abundantly clear to the Congress, first, that the problem involved cannot or will not be solved in any other manner and, second, that the public interest requires immediate action.

The testimony before this committee raises serious questions as to whether the immediate enactment of the proposed legislation would comport with this policy of Congress. Certainly there is no sound basis for hasty action. The consequences may be serious and far-reaching. Conversely, there is much to be gained by more deliberate consideration of such drastic proposals.

In view of the determined efforts that the industry is making to solve its problems in company-dealer relations, we earnestly urge this committee to withhold legislative action, at least until the Congress has had an opportunity to observe for a reasonable length of time the effectiveness of the sweeping changes that have been made and are under consideration in the industry.

I appreciate the opportunity to appear before this committee to present our views on H. R. 11360 and S. 3879.

We at Ford Motor Co. like to think that we are responsible and progressive citizens. We are reluctant therefore to take a flat position in opposition to well-intentioned legislation. I must report to you nevertheless that we are deeply concerned about these bills.

On the surface they have a disarming appearance of fairness and harmlessness, but analysis discloses that either of them if enacted into law would have serious adverse effects not only upon the industry but upon the public as well.

We are fearful of that impact, the impact that the proposed legislation may have upon the dealers, upon millions of employers and stockholders of our own in supporting industries, upon the consuming public and upon the economy in general.

The principles upon which these bills are based could be applied to many other lines of business as has been pointed out this morning.

If the proposed legislation is enacted, therefore, there may be demands for similar legislation across the economy.

Indeed, Senator O'Mahoney has expressed the opinion that the principles underlying these bills should be extended to other industries.

Under the circumstances, we sincerely hope that the Congress will not feel compelled during the closing days of this session to act hastily on these far-reaching legislative proposals.

Our criticism of these bills does not stem from any lack of awareness of the problems of the manufacturer-dealer relationship. We are aware that there are problems, and we are taking steps to meet our responsibilities in finding solutions. We are grateful to those committees of the Congress that have held hearings and have made us aware of some practices in our industry that deserved immediate attention at the top-management level.

We do not intend to imply that we have devised satisfactory means for solving all of the complex and diverse problems of the manufacturer-dealer relationship. In any industry human difficulties and transitory injustices arise in spite of the best efforts of men of good

will, and the provisions of the proposed legislation would appear on the surface to offer a simple solution of some of these problems.

We share the objectives of good faith in the industry, but we are convinced that the bills before the committee will not achieve those objectives.

To make my points clear I must relate briefly some of the unique characteristics of our complicated industry.

The business of manufacturing automobiles is exacting, intricate and hazardous. We must commit hundreds of millions of dollars to plans projected far into the future. We are forced to visualize now the types of vehicles that the public will want and how many they will buy 3 to 5 years hence, and we must make enormous commitments now for facilities to produce those automobiles.

We must have split-second timing in our business, not only in our own operations, but in the operations of our thousands of suppliers. We must have vehicles in the hands of our dealers at a specific time and continue to supply each dealer upon his order throughout the year.

To be able to supply our dealers we place orders with our suppliers many months in advance of production of the first car. Later, we set our production schedules, generally for 5 months in advance, only 1 month of which is covered by dealer orders. The other 4 months are at our risk. Our fixed costs are so large that we must make and sell many hundreds of thousands of vehicles before we even reach the breakeven point.

In the process of planning and production there is a constant battle to bring down costs. This is a difficult matter for, obviously, cost is directly related to the volume of production; and volume, in turn, is dependent upon the number of cars that can be sold.

Thus, in setting the price on the first car to come off the production line, we must base that price upon our best estimates of the number of cars to be sold. In other words, we price, let us say, the millionth car and that is the price for which we sell the first car. Our price, then, is determined by a volume which may or may not be realized. That is where the dealers come in.

Authorized dealers constitute the only outlet for the manufacturer's products to the consuming public. If the dealer fails in his job of selling, there are repercussions all along the line. His failure is felt in his own profits, in the profits of the manufacturer, in the prosperity of the supplier, in the pay check of the employee, in the dividend of the stockholder, and in the economy as a whole.

The entire sales destiny of the manufacturer is in the hands of its authorized dealers. Thus, it is vital to the manufacturer that it have the right to choose who shall represent it in the first instance and who shall continue to be accorded the franchise. Without this right, the manufacturer no longer would have an effective system for the distribution of its products.

The right to be an authorized dealer is valuable because the dealership is the only place in most communities where the consumer can buy the manufacturer's products and obtain authorized service. Although there often are a number of authorized dealerships of a given make of vehicle in the larger metropolitan areas, these dealerships nevertheless are limited in number compared to the number there would be if the manufacturer chose to sell to all who elected to handle its products.

By the nature of their business, automobile dealers must make investments in facilities and acquire the personnel necessary to operate establishments suitable for merchandising new and used vehicles and performing adequate service. Dealers have been willing to make these investments because of the value to them of the right to represent the manufacturer. Indeed, generally there are more applicants for dealerships than there are openings available.

Dealers have been willing to risk their capital and time because of the likelihood of a long and profitable association with the manufacturer. In the case of Ford Motor Co., more than half of the Ford dealers have been with us for more than 20 years. If their association is terminated for any reason, dealers know their investment will be liquidated on a fair basis. General practice in the industry and the current terms of our sales agreements assure such equitable liquidation.

On the other hand, it has been possible for the manufacturer to place its commercial fate at each dealer location in the hands of a single dealer only because of the nature of the relationship. The relationship has enabled the manufacturer to counsel with the dealer in all phases of his business—to help him to analyze market conditions and establish sales objectives, to aid him in providing service facilities and personnel, to assist him in reducing costs and increasing his efficiency, and generally to aid him in servicing his customers—all to the end that his sales will increase and his business succeed. But the nature of the relationship is such that the manufacturer must be in a position, as a last-resort measure, to replace the dealer if, in spite of its best efforts to help the dealer, he fails to represent the manufacturer adequately in the area.

The CHAIRMAN. Mr. Gossett, what is there in the bill before us that would be inconsistent with that conclusion?

Mr. GOSSETT. I am coming to that, Mr. Chairman. I will take it up now, if you prefer. I am trying to lay a background to show why we have dealers and what the nature of that relationship is, because the bill strikes at the very relationship and is based upon the "equities" of the relationship.

The reasons that motivate a manufacturer in making a change in its representation at any given dealer point are not confined to poor representation by the existing dealer. It may appear, for example, that a particular locality will no longer support profitably the number of authorized dealers currently located there. Conversely, an additional dealer may be needed in a particular territory. The appointment of an additional dealer may disappoint the existing dealer so much that he considers the change so detrimental to his interests as to be almost the equivalent of termination. Decisions of this kind must be made, and they are vital to the strength and growth of the industry.

The CHAIRMAN. We had testimony this morning to the effect that it would be no bar to your having additional dealers.

Mr. GOSSETT. I have some comment to make on that, sir. We do not agree with that conclusion.

I want to take up now the sections of the bills, H. R. 11360, and then take up the provisions of S. 3879 as it was passed by the Senate.

I would not say that we disagree with the conclusion, Mr. Chair-

man. We have very serious questions about it, and we want to raise those questions for the consideration of the committee.

Mr. KEATING. Are you familiar also with the proposed amendments which have been discussed here in previous hearings?

Mr. GOSSETT. I am, Mr. Keating, and I am going to discuss those.

I will leave out here the discussion of the language of H. R. 11360, because certainly the committee knows that, and as to the class legislation aspects, I will simply read the first two paragraphs, which epitomize our position, and I will not burden the committee with the reasons.

In our opinion the bill is seriously discriminatory. It singles out the automotive industry and imposes unique requirements and burdens upon automotive manufacturers that are not imposed upon manufacturers in other industries whose products are sold through franchised dealers, and which compete with automobiles for the consumer's dollar. We think no justification for such treatment of the automotive industry has been demonstrated.

Mr. McCULLOCH. Mr. Chairman, I would like to make a comment right at that point. It is my opinion that the rest will come if we once start in this field.

Mr. GOSSETT. That is the opinion expressed by Senator O'Mahoney, I understand, Mr. McCulloch.

Mr. KEATING. Of course, the hearings that have been held related only to the automobile industry, as I understand it.

The CHAIRMAN. That is so.

Mr. GOSSETT. It is our position, Mr. Keating, that the evidence adduced at those hearings does not show the need for this legislation, and that this legislation would be unwise and contrary to the best interests of the dealers themselves and the public.

Mr. McCULLOCH. How about the consumers?

Mr. GOSSETT. And the consumers; more importantly, the consumers, sir.

Mr. KEATING. I see you issued a release today starting off:

The American motorists will have to pay higher prices for their cars and maintenance service if pending bills regulating automobile manufacturer and dealer relations become law.

That is the first sentence designed to catch the eye of the press and the American people.

Why do you say they will have to pay higher prices? Explain your basis for it.

Mr. GOSSETT. Because, as I shall explain in a few moments, this legislation, if the definitions are not made clear, will prevent the manufacturers from having any effective influence on the sales of their dealers. As a result, we will lose volume and lose it substantially, and if we lose volume, our costs will increase and if our costs increase, our prices must increase.

I am going to take that up in great detail.

The CHAIRMAN. You say you will lose volume. Why will you lose volume?

Mr. GOSSETT. We will lose volume, Mr. Chairman, because without the influence of the manufacturer, the normal persuasive sales influence of a manufacturer on the dealers, the dealers will not sell the same volume of cars that they now sell.

The CHAIRMAN. Why would you lose influence if you have this bill? What is in this bill that is so baneful that you would lose the influence that you speak of?

Mr. GOSSETT. Would you rather have me discuss that? I am going to take that up in the greatest detail in just a moment, and very soon.

The CHAIRMAN. All right. Use your own method of explanation.

Mr. GOSSETT. I will skip to page 11 of the statement. I am going right into that subject, sir.

Mr. MALETZ. Mr. Chairman; Mr. Gossett, before you get to page 11, you referred to the punitive nature of the bill. You are referring to H. R. 11360, which, as introduced, would require double damages against the offending manufacturer?

Mr. GOSSETT. Yes, Mr. Maletz.

Mr. MALETZ. One of the amendments proposed would eliminate punitive damages and simply require compensatory damages, or the actual damages sustained by the dealer.

I take it that with that kind of change, the bill would no longer have the punitive aspects to which you refer in your statement?

Mr. GOSSETT. We think it would have the same stifling effect on the industry; just a matter of degree.

The CHAIRMAN. Don't you distinguish between compensatory damages and punitive damages?

Mr. GOSSETT. It would, indeed. We don't know the effect of compensatory damages, however, it is not defined in the bill. I am going to comment on that.

Mr. KEATING. That is what makes lawsuits, Mr. Gossett. You are one of the most eminent lawyers in America. And you know that the proof of damages has troubled lawyers ever since our jurisprudence originated. You can't spell all elements out clearly in any legislation.

Mr. GOSSETT. It is going to be a great day for the lawyers if this bill is enacted, Mr. Keating. I think, though, in view of the fact that this deals with the jurisdiction of the Federal courts, in the sense that there is no definition of "compensatory damages" for this purpose that could be relied upon by the Federal courts, that a definition would be in order, otherwise the courts would rely upon the definitions available to them in the various States, and you may have a number of definitions, depending on the State in which you live.

Mr. KEATING. You think if we are going to report out legislation we ought to define in clear detail what damages are recoverable?

Mr. GOSSETT. I do, indeed, particularly since these are matters that must go to juries. As a distinguished lawyer yourself, Mr. Keating, you know that juries need some instruction as to how they are to compute damages.

Mr. KEATING. Do you have any suggested language in that regard?

Mr. GOSSETT. We have not, but we can produce it very fast if the committee would like us to do so.

The CHAIRMAN. I might say at this point, Mr. Gossett, that the proposed amendments indicate that damages will be recovered. We don't use the word "compensatory," we don't use "double damages," or "punitive," we simply use the word "damages."

Mr. GOSSETT. I didn't understand that. I thought the Senate said in its amendment "compensatory damages."

The CHAIRMAN. We contemplate changing that by an amendment.

Mr. GOSSETT. I think the same comment would apply, Mr. Chairman, because I think the word "damages" is an ambiguous term, and some indication should be made by the committee. I think "damages" is a better term than "compensatory damages," considerably.

Mr. KEATING. I think it might be helpful if you would give us some language to define the word "damages," as you are suggesting. If we report out a bill we might change it, but at least your idea as to what damages should be recoverable would be helpful.

Mr. GOSSETT. We would be very pleased to give you some suggestions on that.

Section 1 (e) :

Turning now to the specific language of the bill, the first part of section 1 (e) defines the term "good faith" as :

the duty of the automobile manufacturer, its officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion or intimidation * * *

Ford Motor Company is opposed, of course, to coercion or intimidation of any of its dealers. It is the intention of our company always to act fairly and equitably toward our dealers.

The proposed statute is unnecessary, and would confuse the present law.

Then I refer to Judge Gwynne's previous testimony in which he says it is now a violation of the Federal Trade Commission Act to coerce dealers, and he makes the point that to enact law of this type might confuse the law in other fields, the existing law.

If we are prohibited by existing law from treating our dealers unfairly, inequitably or arbitrarily, and from coercing or intimidating them, the proposed legislation is unnecessary.

If, however, the proposed legislation creates new law, then it is essential that the meaning of its terms be clearly defined.

Mr. MALETZ. Mr. Gossett, is there any provision in the present franchise agreement between Ford Motor Co. and its dealers which protects the dealers against alleged coercive practices by the Ford Motor Co.?

Mr. GOSSETT. Not express provisions, no. I think there are many provisions of law that protect them, I don't know that we are without protection under the existing provisions of law.

Under the Federal Trade Commission Act, the Robinson-Patman Act, we cannot discriminate against them. Under the general law in many States, commercial law, we cannot discriminate against them or coerce them.

Mr. KEATING. Let me ask you a question there.

You have a form, a printed contract which you use for your dealers?

Mr. GOSSETT. Yes, we do, Mr. Keating, and that is now in the course of being rewritten. We are rewriting it, and hope to hand that to the dealers as soon as we know what the law will be.

Mr. KEATING. I think it would be helpful if we had in the record the form of franchise contract which you use with your dealers. It wouldn't be unduly prying into your business to make that part of the record?

Mr. GOSSETT. We would be very glad to offer it, sir.

The CHAIRMAN. That would be helpful. They will be accepted in the record.

(The form of franchise contract referred to is as follows:)

SALES AGREEMENT

FORD DIVISION, FORD MOTOR COMPANY

-----District

FORD SALES AGREEMENT

Agreement made at Dearborn, Michigan, as of the ----- day of -----,
19--, by and between -----

(State whether an individual, partnership, or corporation.
If the latter, show name of State in which incorporated)

----- with a principal place of
business at -----
(Street address) (City and postal zone)

----- (hereinafter called
(County) (State)
"Dealer"), and Ford Motor Company, a Delaware corporation with its principal
place at Dearborn, Michigan (hereinafter called "Company").

PREAMBLE

Company has created a line of quality motor vehicles bearing the trade-mark "Ford" and parts, accessories and equipment therefor. These products are distributed and serviced primarily by authorized dealers. There has been established and maintained over a period of many years the good will of the public toward Company, its products and its dealers. The success of Company and the success of its dealers are dependent upon the continuation of this good will. In order to maintain and further this good will, it is essential that all dealers give prompt, satisfactory and courteous service to their customers, treat their customers fairly, and handle complaints properly.

Company has built and acquired, and is continuing to build and acquire, extensive plants, facilities, and tooling necessary to the production and distribution of its products on a competitive basis, and has made, and is continuing to make, large investments in engineering and research for the improvement of its products. In order for Company and its dealers to obtain maximum benefits from such plants, facilities, tooling, engineering and research, it is essential that each dealer in the products of Company possess the qualifications, personnel, and facilities requisite to cultivating and developing the market to its full potential in his locality, assume and carry out the obligation and responsibility for thus cultivating and developing the market, and adopt sound management practices in the conduct of his business.

In order to assist its dealers to achieve maximum results, Company has made available, and will continue to make available, to its dealers experience and technical knowledge that it has acquired and developed over the years with respect to the merchandising and servicing of automotive vehicles, parts, accessories, and equipment; has offered, and will continue to offer, to its dealers advice, information, and guidance with respect to management, finance, merchandising, and service in a dealership; and has employed, and will continue to employ, various means to assist its dealers to achieve success in their businesses. It is deemed desirable and in the best interests of the dealers and Company that the dealers adopt a uniform accounting system in order that Company may be able to evaluate the relative operating performance of each of the dealers and to develop standards that will enable the dealer to obtain the most satisfactory results from their businesses.

Since the dealers are the primary retail sales outlet for Company's products, it is essential that the dealers periodically furnish to Company reports and estimates with respect to their respective operations and future requirements to the end that Company may make its commitments for raw materials and plan the production and distribution of its products in line with potential retail sales.

In consideration of the foregoing and the mutual agreements herein made, the parties hereto agree as follows:

A. Company hereby authorizes Dealer as an authorized Ford dealer, and Dealer hereby accepts such authorization and assumes the obligations and responsibilities of an authorized Ford dealer as herein provided.

B. Company shall sell Company Products (as herein defined) to Dealer, and Dealer shall purchase such products from Company, upon the terms and conditions herein set forth.

C. The attached Ford Sales Agreement Standard Provisions (Form "FD-925a JAN 55") which have been read and agreed to by each party hereto, are hereby made a part hereof with the same force and effect as if set forth herein in full.

D. This agreement has been entered into by Company with Dealer in reliance upon, and in recognition of, the fact that the following person(s) substantially participate(s) in the ownership of Dealer:

Name	Address	Percentage of interest

and that the following person(s) shall have full managerial authority and responsibility for the operating management of Dealer in the performance of this agreement:

Name	Address	Title

In the event of any change in the ownership by said named person(s) in Dealer, or of any change in the managerial authority and responsibility of said named person(s) in Dealer, Dealer shall give immediate notice thereof in writing to Company, but no such change or notice thereof shall alter or modify any of the provisions of this agreement unless and until embodied in an appropriate amendment to this agreement duly executed and delivered by Company and by Dealer.

E. Dealer acknowledges notice that no one except the Vice President—Sales and Advertising, the Vice President and General Manager, or the General Manager, of Ford Division, the Secretary or an Assistant Secretary of Company, is authorized to execute this agreement or any agreement relating to the subject matter hereof on behalf of Company, or in any manner to enlarge, vary or modify its terms, and they only by an instrument in writing; and that no one, except the Vice President—Sales and Advertising, the Secretary or an Assistant Secretary of Company, is authorized to terminate this agreement on behalf of Company, and they only by an instrument in writing. This agreement shall not bind Company until it is signed by one of the officers named above.

In witness whereof the parties hereto have executed this agreement as of the day and year first above written.

FORD MOTOR COMPANY

By ----- (Assistant secretary)

----- (Dealer's trade name)

----- (Signature and title)

FORD MOTOR COMPANY

FORD SALES AGREEMENT

STANDARD AGREEMENT

Definitions

1. As used herein, the following terms shall have the following meanings, respectively:

1. (a) "Company products" shall mean new passenger automobiles, trucks and chassis bearing the trade-mark "Ford," parts, accessories and equipment therefor, and other products, that from time to time may be offered for sale by Company to authorized Ford dealers for resale.

1. (b) "Vehicle" shall mean any such automobile, truck or chassis.

1. (c) "Dealer price" shall mean, with respect to each Company product to which it refers, the price to Dealer for such product as from time to time established by Company before deduction of any discount applicable thereto. It shall not include any charge by Company for distribution and delivery or taxes.

Sales to others and purchases from others

2. Company reserves the right to make sales to others (including without limitation other dealers) without obligation or liability of any kind to Dealer, and Dealer reserves the right to make purchases from others without obligation or liability of any kind to Company.

Consideration of orders

3. Company shall give careful consideration to each order received from Dealer for a Company product, but Company shall not be liable in any respect for failure to ship or for delay in shipment, whatever the reason or cause there-

for, or for shipping over routes or by means of transportation other than as specified by Dealer.

Prices and charges

4. Dealer shall pay to Company for each Company Product purchased from Company by Dealer the Dealer Price for such product, plus Company's charge for distribution and delivery and, if not included in such price or charge for distribution and delivery, a charge equivalent to, or in reimbursement for, all applicable taxes on the manufacture, distribution, ownership, use or sale of such Company Product and all applicable taxes measured by the sale or receipts from the sale of such Company Product. Company may change at any time and from time to time without notice the Dealer Price and Company's charge for distribution and delivery for any Company Product. Except as otherwise specified in writing by Company, such price and such charge shall be the price and charge in effect, and delivery to Dealer shall be deemed to have been made and the order deemed to have been filled, on the date of delivery to carrier or to Dealer, whichever first shall occur. In the event Company shall increase the Dealer Price for any Company Product, Dealer shall have the right to cancel, by notice to Company within ten (10) days after receipt by Dealer of notice of such increase, any orders for such product placed by Dealer with Company prior to receipt by Dealer of notice of such increase and unfilled at the time of receipt by Company of such notice of cancellation.

Terms and title

5. (a) *Payment.*—Payment for each Company Product purchased by Dealer shall be made in cash unless the invoice provides otherwise, in which event the terms of the invoice shall govern. Receipt of any check, draft or other commercial paper shall not constitute payment until Company has received cash in the full amount thereof. Dealer shall pay all collection charges.

5. (b) *Title.*—For the purpose of securing payment to Company, title to each Company Product shall be and remain with Company until receipt by Company in cash of the full purchase price therefor, together with all charges provided in paragraph 4, unless the sale is on credit, in which event title shall pass on delivery to carrier or to Dealer, whichever first shall occur. Company shall have the right to retake possession of and resell each Company Product until title to such product shall have passed to Dealer.

5. (c) *Risk of Loss and Claims.*—Each shipment shall be at the risk of Dealer and Dealer shall be responsible for filing all claims for loss of or damage to any Company Product while in the possession of any carrier. Company shall, however, provide reasonable assistance to Dealer in accordance with its then current procedures in processing all such claims.

5. (d) *Demurrage and Diversion Liability.*—Dealer shall be responsible for and shall pay any and all demurrage, storage and other charges accruing after arrival of any shipment at its destination. In the event Dealer shall fail or refuse for any reason to accept delivery of any Company Product ordered by Dealer, Dealer shall pay Company the amount of all expenses incurred by Company in shipping such product to Dealer; and Dealer also shall pay Company the amount of all expenses incurred by Company in returning such product to the original shipping point or diverting it to another destination, as the case may be, but in no event shall Dealer pay Company in connection with any such diversion an amount in excess of the expense of returning such product to its original shipping point.

Refunds on dealer price reductions and model changes

6. (a) *Dealer Price Reductions, Current Model Vehicles and Factory Installed Optional Equipment and Accessories.*—In the event Company at any time shall reduce its Dealer Price for (i) any type and model of Vehicle being offered for sale by Company as a current type and model on the effective date of such reduction and/or (ii) any factory installed optional equipment or factory installed accessory for use on such a Vehicle, Company shall refund or credit to Dealer, with respect to each unused, undamaged and unsold Vehicle (limited as hereinafter provided in subparagraph 6 (d)) of such current type and model in Dealer's stock on the effective date of such reduction, an amount equal to the amount by which the cost to Dealer (as hereinafter defined in subparagraph 6 (e)) of such Vehicle and all factory installed optional equipment and all factory installed accessories, if any, thereon, exceeds the new Dealer Price or the sum of the new Dealer Prices (including any increases), as the case may be, established by Company for such a Vehicle with the same factory installed optional equipment and factory installed accessories, if any, provided that the

amount of such difference exceeds the sum of Five Dollars (\$5.00), and provided further, that Company shall have made no substantial change in the capacity, performance, size, weight, design, and/or specifications of such Vehicle, factory installed optional equipment or factory installed accessories.

6. (b) *Lower Dealer Price on Model Change.*—In the event Company, at the time it introduces any new model of Vehicle, shall establish, for (i) any type of Vehicle of such new model for which there is an equivalent type of Vehicle of the next preceding model, and/or (ii) any factory installed optional equipment or factory installed accessory for use on such new model Vehicle for which there is an equivalent type of factory installed optional equipment or factory installed accessory, as the case may be, for use on an equivalent type of Vehicle of the next preceding model, a Dealer Price below the Dealer Price in effect for such equivalent type of Vehicle of the next preceding model, or for such equivalent type of factory installed optional equipment or factory installed accessory for use on the next preceding model Vehicle, Company shall refund or credit to Dealer with respect to each unused, undamaged and unsold Vehicle (limited as hereinafter provided in subparagraph 6 (d)), of such equivalent type of the next preceding model in Dealer's stock on the date fixed by Company as the date for introduction for sale to the public of such type of new model Vehicle, an amount equal to the amount by which the cost to Dealer (as hereinafter defined in subparagraph 6 (e)) of such equivalent type Vehicle of the next preceding model and all factory installed optional equipment and factory installed accessories, if any, thereon, exceeds the Dealer Price or the sum of the Dealer Prices (including any increases), as the case may be, established by Company for the equivalent type of new model Vehicle with the same or equivalent factory installed optional equipment or factory installed accessories, if any, provided that the amount of such difference exceeds the sum of Five Dollars (\$5.00).

Company shall have the sole right to determine whether or not types of Vehicles, factory installed optional equipment, and factory installed accessories, or combinations thereof, shall be deemed to be equivalent for the purposes of this subparagraph 6 (b). In making such determination, Company shall take into consideration, among other things, the relative capacities, performances, sizes, weights, designs, and/or specifications of such Vehicles, factory installed optional equipment, and factory installed accessories.

6. (c) *Applications for Refunds and Credits.*—Any refund or credit for which provision is made in this paragraph 6 shall be made by Company only if Dealer shall submit written application therefor on a form furnished by Company and within the time specified by Company in writing. Dealer shall support each application with evidence satisfactory to Company, and for a period of one (1) year after submission of such application shall permit Company during all reasonable hours to audit Dealer's records with respect to such application.

6. (d) *Limitations on Refunds and Credits.*—Refunds and credits under subparagraphs 6 (a) and 6 (b) above shall be limited to Vehicles shown by the records of Company to have been purchased from Company during the twelve (12) months' period next preceding the effective date of the applicable price reduction or, in the case of subparagraph 6 (b), the applicable introduction date.

Notwithstanding anything to the contrary in this paragraph 6, Company shall have no obligation to make any refund or credit hereunder with respect to: (i) any Vehicle used as a demonstrator or any equipment or accessory thereon; (ii) any reduction in the amount of Company's charge for distribution and delivery or charge for taxes; (iii) any reduction in the amount of any contribution or any other sum for advertising or sales promotion; (iv) any reduction in the Dealer Price of any optional equipment or any accessory, or any lower Dealer Price for any optional equipment or any accessory, except as specified in subparagraphs 6 (a) and 6 (b) of this paragraph; (v) any reduction in the Dealer Price made by Company, or any lower Dealer Price established by Company, by reason of any law, order or regulation of any government or governmental agency or in an effort to cooperate with any government or governmental agency; or (vi) any refunds, credit, rebate, allowance, discount or payment made or allowed by Company with respect to any Company Product unless Company shall have announced it to Dealer as a reduction in the Dealer Price of such product and it is reflected in Company's Suggested List Price for such product.

6. (e) *Definition of "cost to Dealer."*—The phrase "cost to Dealer," as used in subparagraphs 6 (a) and 6 (b) above, shall be deemed to mean the Dealer Price, or the sum of the Dealer Prices, as the case may be, at which the Vehicle or the Vehicle with all equipment or accessories, if any, thereon, was purchased

from Company, less all refunds, credits, rebates, allowances, discounts and other payments made by Company with respect to such Vehicle, equipment and accessories and all refunds, credits, rebates, allowances, discounts and other payments with respect thereto for which application could have been made but was not made.

Changes in company products

7. Company reserves the right to make changes in Company Products at any time and from time to time without notice to Dealer and without incurring any obligation with respect to any Company Product theretofore ordered or purchased by or delivered to Dealer.

Warranty

8. (a) *Company Warranty.*—Company warrants to Dealer (except as herein-after provided) each part of each Company Product sold by Company to Dealer to be free under normal use and service from defects in material and workmanship until such product has been driven, used or operated for a distance of four thousand (4,000) miles or for a period of ninety (90) days from the date of delivery to the original retail purchaser, whichever event first shall occur. Company makes no warranty whatsoever with respect to tires or tubes. Company's obligation under this warranty is limited to replacement of, at Company's factory or at a location designated by Company, or credit for, such parts as shall be returned to Company with transportation charges prepaid and as shall be acknowledged by Company to be defective. Dealer shall notify Company of any such defective part of which Dealer obtains knowledge within twenty (20) days after Dealer obtains such knowledge. This warranty shall not apply to any Company Product that has been subject to misuse, negligence or accident, or in which parts not made or supplied by Company are used if, in the sole judgment of Company, such use affects its performance, stability or reliability, or which shall have been altered or repaired outside of Company's own factory in a manner which, in the sole judgment of Company, affects its performance, stability or reliability. This warranty is expressly in lieu of all other warranties, express or implied, and of all other obligations or liabilities on the part of Company, except such obligation or liability as Company may assume by its Warranty and Policy Manual for Authorized Ford Dealers or other separate written instrument.

8. (b) *Dealer Warranty.*—Dealer, acting on Dealer's own behalf only, shall execute and deliver a warranty similar to the foregoing and in form satisfactory to Company in connection with each retail sale by Dealer of a Vehicle, each sale by Dealer of a Company Product to another authorized Ford dealer or associate dealer, and each sale by Dealer, whether at wholesale or retail, of a part, accessory or equipment for a Company Product. Dealer shall perform and fulfill promptly all of the terms and conditions of each such warranty.

8. (c) *Reimbursement of Dealer Warranty Claims.*—Company shall replace each part returned under Company's above warranty to Dealer and acknowledged by Company to be defective, or credit Dealer therefor with an amount not less than the amount of Company's then current Dealer Price for such part, provided such part is returned with all charges prepaid within the time provided by and in accordance with Company's then current instructions relating to such a return. Company also shall reimburse Dealer on the basis of the lowest applicable rate for transportation by common carrier, for Dealer's cost of returning such part. In addition, Company shall pay or credit to Dealer with respect to each such part replaced by Dealer and installed by Dealer free of charge to its customer, an amount which shall be not less than one-half of an amount computed by multiplying the time for installing such a part specified in Company's then current "Suggested Time Schedule" by Dealer's regular retail hourly labor rate as then approved by Company as a basis for reimbursement under the provisions of this agreement.

Each part returned to Company by Dealer shall be accompanied by a notice of the disposition of such part desired by Dealer in the event the claim of defect shall not be allowed; in the absence of such notice Company may dispose of such part in such manner as it shall determine, and shall not be liable in any manner whatever by reason of such disposition. In the event Dealer shall request such part to be returned, Dealer shall bear the cost of such return. Dealer shall indemnify Company against all claims and liability by reason of Company's disposition pursuant to the provisions of this agreement of any part returned to Company.

Ford dealers' service policy

9. Dealer, acting on Dealer's own behalf only, shall execute and deliver to each retail purchaser of a Vehicle from Dealer a "Ford Dealer's Service Policy" on a form furnished by Company. Dealer shall perform and fulfill promptly all of the terms and conditions of each such Policy. Dealer hereby authorizes Company to charge his account for each inspection on a Vehicle sold by Dealer performed by another authorized Ford dealer under a Ford Dealer's Service Policy executed and delivered by Dealer in such amount as may be provided therefor in such Policy, and to credit his account for each inspection on a Vehicle sold by another authorized Ford dealer performed by Dealer under a Ford Dealer's Service Policy executed and delivered by the selling dealer in such amount as may be provided therefor in such Policy.

Predelivery inspection

10. Dealer shall inspect and condition each Vehicle before delivery in accordance with predelivery inspection and conditioning schedules furnished from time to time by Company to Dealer.

Operation of business

11. Dealer shall:

11. (a) *Sales and Service Responsibility.*—Develop the sale of Company Products, and render service with respect thereto (including, without limitation, all service to which a purchaser of a Company Product, whether from Dealer or any other authorized Ford dealer, may be entitled), to the satisfaction of Company in such locality as from time to time may be designated by Company (hereinafter called Dealer's locality); but Dealer shall not be limited to Dealer's locality in making sales or in rendering service.

11. (b) *Place of Business, Facilities and Equipment.*—Establish, maintain and equip a place or places of business, including a salesroom, service facilities and a used passenger automobile and truck outlet, in a manner satisfactory to Company; install and maintain therein tools, machinery, and equipment recommended by Company or of a quality equivalent thereto; maintain in the operation of such place or places of business not less than the business hours customary in the trade; and display conspicuously thereat an assortment of Ford signs reasonably satisfactory to Company.

11. (c) *Personnel.*—Employ adequate trained personnel in all departments, including, without limitation, competent salesmen sufficient to solicit to the satisfaction of Company all potential purchasers of Company Products in Dealer's locality and competent service mechanics sufficient to render prompt, workmanlike service to the satisfaction of Company with respect to Company Products in such locality; and send representative employees of Dealer to such training schools as Company may conduct from time to time for personnel of its dealers.

11. (d) *Accounting System.*—Install and maintain an accounting system in accordance with the Manual of Accounting Procedure for Ford Dealers. Any such system shall not, however, be exclusive of other accounting systems Dealer may desire to install or maintain.

11. (e) *Reports.*—Furnish to Company each month on or before the date specified by Company a complete statement, on a form prescribed by Company, reflecting the true financial condition and operating results of Dealer's business as of the end of the preceding month; submit regularly and promptly to Company on dates specified by Company reports entitled "Dealer's Ten Day Reports," or similar reports, accurately and fully prepared on forms prescribed by Company; and submit such supplementary reports and data relating to Dealer's financial condition, the sale and service of Company Products and Dealer's operations as Company from time to time may require. All such statements, reports and data shall be based upon the Accounting Procedure for Ford Dealers required to be installed and maintained by Dealer pursuant to the provisions of subparagraph 11(d) hereof wherever such procedure is applicable.

11. (f) *Dealer's Stocks.*—Maintain a stock of Vehicles of the latest model equivalent to between eight and twelve percent (8% and 12%) of Dealer's retail deliveries of such Vehicles during the preceding twelve (12) months, varying between those percentages in different months in accordance with the estimated seasonal requirements of Dealer for the different months; and maintain stocks of genuine Ford parts, and accessories offered for sale by Company, of an assortment and in a quantity adequate to meet the current demand therefor. In the event Dealer has not been operating as an authorized Ford dealer for the twelve (12) months preceding the date of this agreement, Dealer shall, until such time as Dealer has been so operating, maintain at all times a stock of Vehicles equivalent

lent to Dealer's estimated sales for the next thirty (30) days. This requirement that Dealer maintain stocks shall be subject to Company filling Dealer's orders therefor.

11. (g) *Dealer's Orders.*—Furnish Company each month, on the date or dates designated by Company, an order or orders for the number of Vehicles Dealer will purchase during the next succeeding month, and in connection therewith or separately, as requested by Company, estimates of Dealer's requirements of Vehicles from Company for such succeeding months as Company from time to time may request. Dealer also shall furnish to Company each month, on the date or dates designated by Company, an order or orders for Dealer's requirements of genuine Ford parts and other Company Products other than Vehicles.

11. (h) *Customer Deposits.*—Hold in trust each deposit of cash and/or property received from a customer in anticipation of a future delivery of a passenger automobile, truck, or chassis to such customer until such delivery is consummated and until such delivery is consummated (i) keep any such cash in a separately designated trust fund not commingled with Dealer's own funds, and (ii) hold title to any such property in trust, and not place or permit the placing of any lien on such property, or sell the same without at the time placing in such a trust fund a sum in cash equal to the amount of the allowance granted to the customer by Dealer with respect thereto. Dealer shall enter into an agreement with each prospective customer at the time such deposit or transfer is made, binding Dealer with respect to such monies or property as provided above.

11. (i) *Customer Handling.*—Make every reasonable effort to handle to the satisfaction of Company all matters relating to the sale and serving of Company Products in Dealer's locality, and in pursuance thereof establish regular contact, either by correspondence or personal interview, with owners and users of Company Products in such locality; and report promptly to Company each complaint received by Dealer relating to any Company Product which Dealer cannot readily remedy, together with the name and address of the complainant.

11. (j) *Demonstrators.*—Keep available at all times in good running order and presentable condition for demonstration purposes an adequate number of Vehicles of the latest model (but not at any time less than one passenger automobile and one truck).

11. (k) *Trade Practices and Advertising.*—Conduct Dealer's business in a manner that will reflect favorably at all times on Company and Company Products and the good name, good will and reputation thereof; and avoid in every way any practice or advertising that is or might be detrimental to Company, Company Products, or the public, or to which Company may object as being detrimental to the good name, good will or reputation of Company or Company Products.

11. (l) *Inspections and Tests.*—Allow representatives of Company, at any reasonable time and at reasonable intervals, to examine Dealer's place or places of business and Dealer's stocks of Company Products, to test Dealer's equipment and facilities, and to examine Dealer's records, contracts, and accounts relating to the sale or service of Company Products, to the end that Company may be assured that Dealer is carrying out all of the terms of this agreement.

Dealer not agent of company

12. This agreement does not in any way create the relationship of principal and agent between Company and Dealer; and under no circumstances shall Dealer be considered the agent of Company. Dealer shall not act or attempt to act, or represent himself, directly or by implication, as agent of Company or in any manner assume or create, or attempt to assume or create, any obligation on behalf or in the name of Company.

Trade-marks and trade names

13. (a) *Use in Firm Name.*—Dealer may use the word "Ford" in Dealer's firm name or trade name but only after having obtained Company's prior written approval. On request of Company at any time, Dealer shall discontinue promptly and permanently the use of the word "Ford" in Dealer's firm name or trade name and promptly shall take such steps as may be necessary or appropriate in the opinion of Company to change Dealer's firm name or trade name to eliminate the word "Ford" therefrom.

13. (b) *Limitations on Use.*—Dealer shall not use the word "Ford" or any other trade-mark or trade name used or claimed by Company or coined words or combinations containing the same or parts thereof, in connection with any business conducted by Dealer other than in dealing in company products; except that the word "Ford" may be used in connection with a business associated or affiliated

with Dealer as Dealer's used passenger automobile and truck outlet if Dealer obtains Company's prior written approval and if Dealer retains the right to require said associated or affiliated business to discontinue such use at any time Dealer may direct, and Dealer shall direct such discontinue on request of Company at any time.

Dealer shall not contest the right of Company to exclusive use of any trade-mark or trade name used or claimed by Company.

Genuine parts

14. Dealer shall not sell or offer for sale or use in the repair of any company product, as a genuine new Ford part, any part that is not in fact a genuine new Ford part manufactured by or for Company.

Cooperative Ford dealers' advertising fund

15. (a) *Fund*.—Company and various authorized Ford dealers heretofore have agreed that it would be to their mutual interest to establish and maintain by joint contributions a fund, known as the Cooperative Ford Dealers' Advertising Fund (hereinafter referred to as the Fund), that is subject to the control of, and is administered by, Company in carrying out a coordinated, effective and economical advertising program (hereinafter referred to as the Advertising Program) for the benefit of such dealers; and accordingly, a Fund consisting of two portions, the Company's portion and the Dealer's portion, heretofore has been established and is being administered by Company for the purpose of carrying out the Advertising Program.

15. (b) *Company's Portion*.—Company's portion of the Fund shall consist of Company's contributions. Company shall contribute to the Fund the sum of Four Dollars (\$4.00) for each Vehicle purchased from Company by Dealer hereunder except any vehicle with respect to which Dealer shall receive a refund under the provisions of subparagraph 15 (c). Company's portion of the Fund shall be expended solely for such advertising as Company in its opinion shall determine will carry out the Advertising Program most effectively.

15. (c) *Dealer's Portion*.—Dealer's portion of the Fund shall consist of Dealer's contributions, which Company hereby is authorized to collect from Dealer. Dealer shall contribute to the Fund the sum of Thirteen Dollars (\$13.00) for each new Vehicle purchased by it from Company hereunder, provided that in the event Dealer resells or leases any such Vehicle to the United States, any state, or any other governmental authority, Dealer shall be entitled to a refund of any such sum so paid with respect to such vehicle. Company shall maintain, except as hereinafter provided, a joint account or accounts with respect to the contributions of Dealer and such other dealers located in the same community, town or city as Dealer and in such other communities, towns or cities as, in the opinion of Company, may form a common area with such community, town or city for purposes of local advertising. In the event that, in the opinion of Company, there are no other such dealers, Company shall maintain a separate account of Dealer's contributions.

Dealer's portion of the Fund shall be expended solely for local advertising through the use of such media as in the opinion of Company will carry out the Advertising Program most effectively. As an aid in formulating such opinion, Company from time to time may request Dealer to comment upon advertising media available in Dealer's locality. The cost of such local advertising shall be charged to the joint or separate account, as the case may be, established as above provided. Suitable reference shall be made in such advertising to such dealers, either by mention of the firm name or names and address or addresses thereof or, if in the opinion of Company such reference is impracticable, by an appropriate group reference. Preparation and handling expenses and all other costs of any character incurred in connection with such local advertising shall be included in the cost which may be charged to such joint or separate account.

15. (d) *Discontinuance, Suspension, and Modification*.—Company may discontinue the Fund at any time by written notice to all authorized Ford dealers, including Dealer. Company, by similar notice also may suspend, modify, or change from time to time the contributions to be made by Company and by Dealer to the Fund; provided, however, that without Dealer's written consent no such suspension, modification, or change shall be made that will result in Dealer's contribution per vehicle being greater in relation to Company's contribution per vehicle than Thirteen Dollars (\$13.00) is to Four Dollars (\$4.00) or which will increase the amount of Dealer's contribution per vehicle over the amount specified in subparagraph 15 (c) above.

15. (e) *Refunds Upon Termination or Discontinuance.*—In the event of the termination of this agreement or the discontinuance of the Fund, Company shall refund to Dealer as soon as practicable after the effective date of such termination or discontinuance the amount of any unexpended balance outstanding in Dealer's account in Dealer's portion of the Fund; provided, however, that if Dealer's contributions shall have been credited to a joint account, Dealer shall be refunded an amount which shall bear the same relation to the unexpended balance of such account as the sum of Dealer's contributions to such account during the twelve (12) months' period immediately preceding the effective date of such termination or discontinuance bears to the total contributions to such account during such period by all dealers, including Dealer, whose Ford Sales Agreements are in effect as of the effective date of such termination or discontinuance.

In the event of the termination of this agreement or the discontinuance of the Fund, Company may dispose of any unexpended balance remaining in Company's portion of the Fund as it sees fit.

15. (f) *Accounting.*—Company shall furnish to Dealer as soon as practicable following the close of each calendar year during the continuance of the Fund, and in the event of termination of this agreement or discontinuance of the Fund, as soon as practicable after the effective date of such termination or discontinuance, a statement of account with respect to the joint or separate account to which Dealer's contributions shall have been credited.

Other advertising and sales promotion funds

16. In addition to the contributions provided for in paragraph 15, Company may collect from Dealer in connection with Dealer's purchases of vehicles such additional sums for advertising and sales promotion purposes as may be authorized by Dealer.

Termination

17. (a) *Termination by Either Party.*—This agreement may be terminated at any time at the will of either party by notice to the other party, and such termination shall operate to cancel each order for a Company Product theretofore received by Company from Dealer and unfilled (as defined in paragraph 4) on the effective date of termination. In the event of termination by Dealer, notice of termination shall be given to Company not less than thirty (30) days prior to the termination date if Company so requests, and in the event of termination by Company, notice of termination shall be given to Dealer not less than ninety (90) days prior to the termination date, except that (1) notice of termination effective immediately may be given by either party in any of the following events: (i) death of Dealer if Dealer is an individual or of any partner if Dealer is a partnership, (ii) dissolution of Dealer if Dealer is a corporation or co-partnership, (iii) insolvency or bankruptcy of Dealer, appointment by a court of a receiver, trustee or custodian for Dealer or Dealer's business, or an assignment by Dealer for benefit of creditors, (iv) failure of either party to obtain any license required to enable such party to carry out its obligations under this agreement, or the revocation or the suspension of any such license; and (2) notice of termination effective immediately may be given by Company in any of the following events: (i) any assignment or attempted assignment by Dealer of any interest in this agreement without Company's written assent, (ii) any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise of any major interest in the direct or indirect ownership or management of Dealer, (iii) failure of Dealer for any reason to function in the ordinary course of business, or failure of Dealer for any reason to keep his place of business open during the hours customary in the trade, (iv) a disagreement between or among principals, partners, managers, officers or stockholders of Dealer which in the opinion of the Company may affect adversely the ownership, operation, management, business or interest of Dealer or Company, or (v) conviction in a court of competent jurisdiction of Dealer, or a partner, manager, principal officer or major shareholder for any violation of law tending, in Company's opinion, to affect adversely the operation or business of Dealer or the good name, good will or reputation of Company, Company Products or Dealer. Dealer shall advise or cause Company to be advised immediately in writing of the happening of any of the above specified events.

17. (b) *New agreement.*—The termination of this agreement by the execution and delivery of a new Ford Sales Agreement between the parties hereto shall

not give rise to the rights and obligations for which provision is made in paragraphs 15, 18, 29 and 21, unless otherwise specified in such new agreement.

18. Upon termination of this agreement Dealer shall cease to be an authorized Ford dealer and shall:

18. (a) *Sums Owing Company.*—Pay to Company all sums owing from Dealer to Company.

18. (b) *Discontinuance of Use of Trade-marks and Trade Names.*—(1) Remove at Dealer's expense all signs erected or used by Dealer, or by a business associated or affiliated with Dealer, and bearing the name "Ford" or any other trade-mark or trade name used or claimed by Company (except as such use may be permitted under existing agreements relating to products of Company other than Company Products), or any word indicating that Dealer is an authorized Ford dealer with respect to any Company Product; (ii) erase or obliterate from letterheads, stationery, repair order forms and other form used by Dealer or by a business associated or affiliated with Dealer the word "Ford" and all other trade-marks and trade names used or claimed by Company (except as such use may be permitted under existing agreements relating to products of Company other than Company Products), and all words indicating that Dealer is an authorized Ford dealer with respect to any Company Product; (iii) permanently discontinue all advertising of Dealer as an authorized Ford dealer with respect to any Company Product; (iv) permanently discontinue the use of the word "Ford" in Dealer's firm name or trade name and take such steps as may be necessary or appropriate in the opinion of Company to change such firm name or trade name to eliminate the word "Ford" therefrom; and (v) thereafter refrain from doing anything that would indicate that dealer is or was an authorized Ford dealer in any Company Product.

18. (c) *Assignment of Retail Orders and Customer Deposits.*—Transfer or assign by appropriate documents to Company, or its nominee, all retail orders for Company Products which Dealer has not filled, and all customer deposits made thereon; and deliver to Company the names and addresses of Dealer's customers and of prospective purchasers of Company Products from Dealer.

Successor to dealer in the event of death or resignation

19. In the event of the termination of this agreement by reason of the death of Dealer if Dealer is an individual, the death of the principal owner of Dealer named in paragraph D of this agreement if Dealer is a partnership or corporation, or the resignation because of incapacity for reasons of health of Dealer, Company shall offer a Ford Sales Agreement, limited by appropriate amendment to a term of one (1) year and subject to termination during said term as provided therein, to a son(s), son(s)-in-law, brother(s), brother(s)-in-law or nephew(s) of such deceased person, or of the principal owner or Dealer in the event of such resignation, nominated by Dealer, provided that (i) such nominee shall have been participating in the management of Dealer for a reasonable period of time and shall be named in paragraph D of this agreement at the time of such termination, (ii) Dealer shall have notified Company in writing of such nomination prior to such termination (any such nomination shall be subject to change by Dealer by notice in writing to Company of such change prior to such termination), and (iii) such nominee shall possess qualifications, capital and facilities which Company, in its sole discretion, shall determine at the time of such termination to be satisfactory to it. In the event that more than one nominee shall qualify under the above conditions to receive an offer of such a Ford Sales Agreement, Company, in its sole discretion, shall determine to which nominee or nominees such Ford Sales Agreement shall be offered. At least ninety (90) days prior to the expiration of the one (1) year term of such Ford Sales Agreement, Company shall determine in its sole discretion whether or not such nominee or nominees possess qualifications, capital and facilities to carry on the dealership satisfactory to Company and, in the event Company shall so determine that such nominee or nominees do possess such qualifications, capital and facilities, Company shall offer to such nominee or nominees a Ford Sales Agreement in the form then in effect between Company and its authorized Ford dealers.

Reacquisition of company products and acquisition of dealer's signs, tools, and equipment

20. Upon termination of this agreement by Company, Company shall purchase or accept upon return from Dealer and Dealer shall sell or return to Company, or upon termination of this agreement by Dealer, Company shall have the option to purchase or reacquire from Dealer:

20. (a) *Vehicles*.—Each unused and undamaged vehicle (together with all factory installed accessories and optional equipment thereon) in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such vehicle is in first-class saleable condition, is of a type and model being offered for sale by Company on such date of termination as a current type and model, and was purchased by Dealer from Company, as shown by the records of Company. The price for such vehicle shall be the Dealer price at which such vehicle was purchased from Company, plus Company's charge or charges for distribution and delivery and taxes paid by Dealer at the time of such purchase and less all prior refunds, credits, rebates, allowances, discounts and other payments made by Company with respect to such vehicle and all refunds, credits, rebates, allowances, discounts and other payments with respect thereto for which Dealer could have applied but did not apply, provided such vehicle (and the accessories and equipment thereon) has not been altered outside Company's factory.

Delivery of all vehicles reacquired by Company or returned by Dealer pursuant to the provisions of this paragraph 20 shall be made at Dealer's place of business unless Company in writing direct otherwise, in which event Company shall pay the transportation costs to the place of delivery.

20. (b) *Parts and Accessories*.—Each new, unused and undamaged part in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such part is in first-class saleable condition, and provided further, that such part was sold by Company for use in a vehicle of a model being offered for sale by Company on the effective date of such termination as a current model or of any of the three (3) next preceding models, and was purchased by Dealer from Company, as shown by the records of Company. The price for such part shall be the Dealer price for such a part in effect on such date of termination, less any cash discount at the rate in effect at the time of termination.

Each new, unused and undamaged accessory in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such accessory is in first-class saleable condition, and provided further, that such accessory was purchased by Dealer from Company, as shown by the records of Company, and provided further that such accessory was sold by Company for use in a vehicle of a model being offered for sale as a current model by Company on such date of termination or was purchased from Company within the sixty (60) day period preceding the date of giving of notice of such termination. The price for such accessory shall be at the Dealer price for such an accessory in effect on such date of termination, less any cash discount at the rate in effect at the time of termination.

Delivery of all parts and accessories reacquired by Company or returned by Dealer pursuant to the provisions of this paragraph 20 shall be made at Dealer's place of business unless Company in writing directs otherwise, in which event Dealer, at Dealer's own expense, shall pack and box all such parts and accessories carefully and, at Company's expense ship them to Company's Parts Depot from which Dealer usually has been supplied, or to such other destination as Company may direct. In the event Dealer fails so to pack and box such parts and accessories, Company may do so and deduct the expense thereof from the price of such parts and accessories.

20. (c) *Dealer's Signs*.—Each sign bearing the name "Ford" which is located at a place of business of Dealer, which is owned by Dealer on the effective date of such termination, and which Dealer acquired in order to comply with the provisions of paragraph 11 (b), at a price and upon terms and conditions to be mutually agreed upon by Company and Dealer.

20. (d) *Tools and Mechanical Equipment*.—All tools and mechanical equipment owned by Dealer on the effective date of such termination, which were designed especially for servicing Company products and are of a type recommended in writing by Company, at a price and upon terms and conditions to be mutually agreed upon by Company and Dealer.

20. (e) *Title*.—Dealer shall furnish to Company, in form satisfactory to Company, a bill of sale of all property purchased by Company or returned by Dealer pursuant to the provisions of this paragraph 20, together with evidence satisfactory to Company that Dealer has complied with all applicable bulk sales laws and that such property is free and clear of all claims, liens and encumbrances.

20. (f) *Payment*.—Company shall pay Dealer for the property purchased or reacquired by it or returned by Dealer pursuant to the provisions of this paragraph 20 promptly following Dealer's fulfillment of all of Dealer's obligations under paragraph 18 and this paragraph 20.

Termination payments with respect to dealer's premises

21. Upon termination of this agreement by Company solely for a reason other than any of those described in clauses (1) (ii), (1) (iii), (2) (i), (2) (ii) and (2) (v) of paragraph 17 (a), Company shall make monthly payments to Dealer with respect to Dealer's place or places of business as hereinafter provided.

21. (a) *Amount of Payments.*—The amount of each such monthly payment shall be determined by multiplying One Dollar (\$1.00) by the total number of vehicles purchased by Dealer from Company during the twelve (12) months immediately preceding the effective date of termination; provided, however, that in no event shall the amount of any such payment for any month exceed the sum of the rent paid by Dealer for such month for all eligible premises (as defined in subparagraph 21 (c)) leased by Dealer and the fair rental value for such month, as determined by Company, of all eligible premises owned by Dealer.

21. (b) *Period of Payments.*—The period for which Company shall make such monthly payments shall commence with the ninety-first (91st) day following the effective date of termination and shall continue for a period of twelve (12) months.

21. (c) *Eligible Premises.*—The premises with respect to which Company shall make such monthly payments (herein called "eligible premises") shall be the place or places of business that are being used by Dealer for the purpose of carrying out Dealer's obligations under this agreement at the time Dealer shall receive notice of termination and that shall be owned or leased by Dealer at such time and continuously thereafter until a date more than ninety (90) days subsequent to the effective date of termination. In the event such place or places of business shall be used partially for the purpose of carrying out Dealer's obligations under this agreement, only that portion of such place or places of business determined by Company to have been used for such purpose shall be included in the term "eligible premises."

21. (d) *Effect of Sale, Lease or Occupancy.*—In the event at any time within fifteen (15) months after the effective date of termination, (i) any place of business or part thereof that is an eligible premise shall be occupied by anyone for any purpose, or (ii) such place of business or part thereof in the opinion of Company could be occupied by any business with which Dealer may be associated, or (iii) Dealer shall sell such place of business or part thereof, if owned by Dealer, or anyone shall offer to Dealer to purchase the same at a price that in Company's opinion is a fair price, or (iv) Dealer shall lease to another such place of business or part thereof, or anyone shall offer to Dealer to lease the same, or to accept an assignment of Dealer's lease or leases thereof, if any, for a consideration that in Company's opinion is a fair consideration, or (v) Dealer's lease or leases, if any, of such place of business or part thereof shall expire or would expire if not renewed by Dealer or Dealer's failure to act, such place of business thereupon shall cease to be an eligible premise for any purpose under this paragraph 21, and Company shall be under no obligation to make any payment with respect thereto for any period after the happening of such event and the amount of the monthly payment provided in subparagraph 21 (a) above shall be reduced proportionately.

21. (e) *Application.*—Dealer shall make a separate written application to Company for each monthly payment to be made pursuant to this paragraph 21. Each such application shall be upon a form furnished by Company, and shall be filed with Company within sixty (60) days after the expiration of the month for which it is made. Company shall make payment on each application within ninety (90) days after receipt thereof.

Each application must be supported by proof satisfactory to Company, and Company shall have access to Dealer's premises and may audit Dealer's books and records with respect to each such application at all reasonable times within six (6) months after receipt of such application from Dealer hereunder. Dealer's failure to file application as herein provided shall excuse Company from all obligations hereunder.

Representations

22. Dealer acknowledges that no representation or statement has been made to him in behalf of Company that in any way tends to change or modify the terms, or any of them of this agreement, or that in any manner prevents this agreement from becoming effective; and further acknowledges that there is no other agreement or understanding, either oral or in writing, between the parties affecting this agreement or relating to the subject matter hereof.

Termination of prior agreements

23. This agreement terminates and supersedes all prior Ford Sales Agreements, if any, between the parties hereto, except that all unexpended balances in the Cooperative Ford Dealers' Advertising Fund to the account of Company and Dealer, respectively, shall remain in such Fund, subject, however, to the provisions of this agreement, and except that this agreement shall not operate to cancel any of Dealer's unfilled orders with Company for any Company products placed with Company pursuant to the provisions of any Ford Sales Agreement terminated and superseded by this agreement.

Assignment

24. Neither this agreement nor any right hereunder or interest herein may be assigned by Dealer without the prior written assent of Company, executed by one of the officers authorized to execute this agreement.

Separability

25. In the event any provision of this agreement shall be determined to be invalid or unenforceable and prohibited by the laws of the state or place where it is to be performed, this agreement shall be considered divisible as to such provision, and such provision shall be inoperative and shall not be part of the consideration moving from either party to the other, and the remaining divisions of this agreement shall be valid and binding and of like effect as though such provision were not included herein.

No implied waivers

26. The waiver by either party, or the failure by either party to claim a breach, of any provision of this agreement shall not be, or be held to be, a waiver of any subsequent breach, or as affecting in any way the effectiveness, of such provision.

Transactions after termination not a renewal

27. In the event either party has any business relations with the other party after termination of this agreement, such relations shall not be construed as a renewal of this agreement or as a waiver of such termination, but all such transactions shall be governed by terms identical with the provisions of paragraphs 4 and 5 of this agreement unless the parties hereto execute a new agreement superseding this agreement.

Limitation of company's liability

28. The requirements of this agreement as to the facilities to be supplied by Dealer, as to the conduct of the business of dealing in Company Products and as to relationships between Dealer and others are intended only to protect the good name, good will and reputation of Company, to assure Company that its products will be made available to the public and that service facilities will be made available to users of its products, and to assure or inform Company of the financial stability of Dealer. This agreement contemplates that Dealer shall acquire Dealer's own place or places of business, facilities and equipment in accordance with Dealer's own discretion and shall purchase Company Products as Dealer's own and resell them to customers selected by Dealer, all in conformity with the requirements and limitations herein specified but otherwise in Dealer's own discretion. Except as herein specified, nothing herein contained shall impose any liability on Company for any expenditure made or incurred by Dealer in preparation for performance or in performance of Dealer's obligations under this agreement.

Notices

29. Any notice required or permitted by this agreement, or given in connection herewith, shall be in writing and may be by personal delivery or by first-class registered mail, postage prepaid. Notices to Company shall be delivered to or directed to the District Sales Manager of the area in which Dealer is located: notices to Dealer shall be delivered to any person designated in paragraph D of this agreement as having full managerial authority and responsibility for the operating management of Dealer or directed to Dealer at Dealer's principal place of business as described herein.

Michigan agreement

30. This agreement has been signed by Dealer and sent to Company's office at Dearborn, Michigan, for final approval and execution, and has been signed there and delivered on behalf of Company. The parties hereto intend this agreement to be executed as a Michigan agreement and to be construed in accordance with the laws of the State of Michigan.

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Mr. McCULLOCH. Mr. Chairman, I would like to supplement the suggestion of my colleague.

If it would be no imposition, I would like you to submit not only your present franchise, but the franchises that you have been issuing to dealers since, we will say, the end of the war. I would like to know the history of this friction between dealers and manufacturers, and I think that the franchise agreements over a 10-year period would give us a good perspective.

Mr. GOSSETT. We will be very glad to do that.

The CHAIRMAN. It will be accepted and received.

(The franchises referred to are as follows:)

FORD MOTOR COMPANY

TWIN CITY BRANCH

FORD SALES AGREEMENT

AGREEMENT made at Dearborn, State of Michigan, as of this 28th day of December 19--, by and between Ford Motor Company, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter called "Company"), and TENVOORDE MOTOR CO A MINNESOTA CORPORATION with principal place of business at St. Cloud STEARNS County, State of Minnesota (hereinafter called "Dealer").

In Consideration of the promises herein made to each other by the parties hereto it is agreed as follows:

SELLING RIGHTS

(1) Company agrees to sell and Dealer agrees to purchase, for resale for use within the boundaries of the United States of America, Ford passenger automobiles, commercial automobiles, trucks, and parts and accessories (all of which for convenience are sometimes hereinafter collectively referred to as "Company Products"), upon the terms and conditions hereinafter specifically set forth and subject to the right reserved by Company to sell to other dealers and direct to retail purchasers in the United States without obligation of any kind to Dealer on any such sale. It is intended that this agreement shall govern all relationships between Company and Dealer unless some such relationships

shall be governed by another agreement in writing duly executed by an officer of Company. In case Company shall advise its dealers in a specified territory that it will not merchandise some portion of the commodities herein defined as Company products through all Ford Dealers in such territory, but only through specified dealers, and Dealer is not one of such specified dealers, then such products shall be deemed to be excluded from this agreement, any other provision herein to the contrary notwithstanding.

PRICES

(2) Company will sell its products to Dealer at such prices as are from time to time established by Company plus Company's charge for distribution and delivery and a sum equivalent to, or in reimbursement for, any taxes imposed by any law of the United States, any state, or municipality, or other taxing authority upon the manufacture, ownership, use, or sale of any of Company products sold under this agreement, if not included in the established price.

TERMS AND TITLE

(3) Payment by Dealer is to be in cash, except in cases where the invoice shows sale to be on credit. Title to all Company products, except in a case where the invoice shows sale to be on credit, shall be and remain with Company until actual receipt of the full purchase price in cash by Company. In case Dealer makes payment by check or by paying draft attached to bill of lading, Dealer shall pay the cost of exchange, if any. Receipt from Dealer or Dealer's bank of any check, draft or other commercial paper shall not constitute payment until Company has received cash in the full amount thereof. Until Company has received cash in full payment of any such check, draft or other commercial paper, its right to retake and resell Company products for which such paper is issued shall continue.

CHANGE IN PRICES

(4) Prices of all company products shall be subject to change from time to time; however, Company agrees that in the event of a price reduction on current models of its Ford passenger automobiles, commercial automobiles, or trucks, it will reimburse Dealer to the extent of the difference between the price at which such product was purchased and the reduced price to Dealer on any new, unused and unsold unit of said products in Dealer's stock purchased from Company during the period of sixty (60) days next preceding the change in price, as determined by date of Company's invoice, provided that Dealer files written claim for refund within ten (10) days after announcement by Company of such price reduction. Such claim shall be supported by adequate proof and subject to Company audit. Dealer shall not be entitled to any reimbursement under this paragraph (4) on account of any reduction in the amount of the Company's charge for distribution and delivery, or on account of any reduction in the amount of taxes.

OPERATION OF BUSINESS

(5) Dealer agrees to maintain a place of business and only one place of business, unless repair shops or used automobile outlets and/or neighborhood service stations are separate from salesroom, located in a place and equipped in a manner acceptable to Company; to display conspicuously thereon approved Ford signs; to install and maintain therein the tools, machinery and equipment recommended by Company; to employ sufficient, competent salesmen to solicit adequately all potential purchasers of Company products in the community in which Dealer is located, and sufficient, competent service mechanics to render prompt, efficient service to owners of Company products and to render such service to any owners of Company products engaging such service, including the service to which a purchaser of such products from Dealer (or from another dealer who has paid Dealer the Service Commission mentioned in subparagraph (c) of paragraph 9 hereof, is entitled; to install and maintain an accounting system in accordance with Ford Dealers Accounting Procedure Manual as approved by Company; to furnish Company at regular intervals as designated by Company accurate financial statements reflecting the true financial condition of Dealer's business on standard forms provided by Company for that purpose; to allow representatives of Company, at all reasonable times and from time to time, to examine all records, contracts and accounts covering sale or service of Company products by Dealer and to examine Dealer's stock and place of business and to test Dealer's equip-

ment and facilities to the end that Company may be assured that Dealer is carrying out all of the terms of this agreement and is properly equipped to render adequate service to owners or operators of Company products; to submit promptly to Company, Dealer's Ten-Day Reports accurately and fully prepared on forms provided by Company therefor and on the dates specified therein.

TRADE MARKS AND NAMES

(6) Dealer further agrees not to use the words "Ford," "Fordson," "Lincoln," "Zephyr," "Mercury," or any trademark or trade name adopted by Company or coined words or combinations containing the same, in connection with any business conducted by Dealer other than dealing in Company products, and under no circumstances as a part of Dealer's firm name or trade name; not to contest the validity of any patent used or claimed by Company, nor to contest the right of Company to exclusive use of any trade mark or trade name at any time adopted by Company.

DEALER NOT TO ACT AS AGENT

(7) Dealer further agrees not to make any representation or warranty concerning company products on behalf of company, but to refer purchasers to "Ford Motor Company Warranty" printed on back of retail dealer's order form supplied by company and not in any manner to attempt to assume or create obligations on behalf of company or in any manner attempt to act as agent for company.

DEALER'S STOCK

(5) Dealer further agrees

(a) To maintain a stock of passenger automobiles, commercial automobiles and trucks of current model equivalent to between eight and twelve percent (8 and 12 percent) of Dealers retail deliveries of such units during preceeding twelve (12) months varying between those percentages in different months in accordance with the estimated normal seasonal requirements of Dealer for the different months, to maintain a stock of genuine Ford parts and approved accessories of an assortment, reasonably comparable to the current demand, equivalent to at least one-sixth (1/6th) of the sales of parts and accessories by Dealer during the previous twelve (12) months, based on cost to Dealer. In case Dealer has not been operating under a Ford Sales Agreement during the twelve (12) months preceding the date of this agreement, Dealer agrees, until such time as Dealer has been operating under a Ford Sales Agreement for twelve (12) months, to maintain at all times a stock of new Ford passenger automobiles, commercial automobiles and trucks equivalent to the estimated sales during the next thirty (30) days and of parts and accessories equivalent to the estimated requirements for sale and service during the next sixty (60) days. The requirement that Dealer maintain adequate stocks shall be dependent on Company's ability to supply the same.

ORDERS

(b) To enable Company to schedule its production effectively, Dealer shall furnish Company, prior to the tenth (10th) day of each month, with an order for the estimated number of passenger automobiles, commercial automobiles and trucks which Dealer will need for sale and to maintain stocks during the succeeding month in accordance with the provisions stated in subparagraph (a) of paragraph 8 above, and will on dates designated by Company furnish Company with orders on forms provided by Company therefor for Dealer's estimated requirements of parts and accessories for sale and to maintain stocks in accordance with the provisions stated above. Company agrees to give careful consideration to all orders received from Dealer but expressly reserves the right to follow or depart from such orders, and Company shall in no way be liable

for failure to ship, or for delay in shipments however caused, or for shipping over other than routes specified by Dealer.

DEMONSTRATORS

(c) To have available at all times in good running order and presentable condition for demonstration purposes, an adequate number of new Ford units of current model (but at no time less than one passenger automobile and one commercial automobile or truck).

TRADE PRACTICES

(9) Dealer further agrees:

(a) To avoid in every way such trade practices in connection with Dealer's competition with other Ford Dealers and in selling Company products to the public as are injurious to Company's good name and good will or are detrimental to public interest.

RETAIL PRICES

(b) Insofar as it is lawful for Dealers so to agree, not to resell Company products bearing Company's trade mark or trade name at less than retail prices established for Dealer's city or town from time to time by Company, except in cases where such goods have been damaged, or have become obsolete, or are about to become obsolete because of change in models, or in the case of sales to Company or its nominees or to other authorized Fords Dealers, or Associate Ford Dealers, and except when a discount is warranted by warrantee purchases unless such a discount is in violation of law. Dealer agrees if requested by Company to display prominently in Dealer's showroom a chart showing current minimum retail prices as established by Company for Dealer's city or town.

SERVICE COMMISSION

(c) That as competent Authorized Ford Service must be made available to users of Ford passenger automobiles, commercial automobiles and trucks and as a means to that end, in case Dealer sells a new passenger automobile, commercial automobile or truck to a buyer residing in another city or town where an authorized direct Ford Dealer is located or operates a Neighborhood Service Station under a Supplementary Sales Agreement with Company, or to a buyer residing in another incorporated municipality in which there is no such Ford Dealer or Neighborhood Service Station, but which municipality is contiguous to a city or town in which an authorized direct Ford Dealer is located, Dealer shall pay a service commission of Thirty Dollars (\$30.00) to the dealer in the town where purchaser resides within five (5) days after the unit is delivered to buyer with the understanding that such other dealer agrees to render to such purchaser the service which a new car purchaser ordinarily receives from the delivering dealer. In case purchaser is a resident of a multiple dealer metropolitan area, as defined below, and Dealer's place of business is not in that area, Dealer shall pay such service commission to the authorized direct Ford Dealer located nearest to place of residence of purchaser. The requirement of this subparagraph (c) that Dealer pay a service commission shall not apply, if Dealer is located in a multiple dealer metropolitan area (meaning thereby a city and such surrounding territory as Company in its absolute discretion may from time to time include within the metropolitan area of that city) and sell to a purchaser residing anywhere within such metropolitan area, to sales to owners of fleets of five (5) or more automobiles and/or trucks, or to sales to purchasers temporarily residing for more than thirty (30) days at the place where Dealer is located. Company will act as umpire between dealers in connection with these service commissions, but does not guarantee payment of any such service commissions.

GENUINE FORD PARTS

(d) That in view of the fact Company has in its advertising consistently urged the ultimate users of Company products to patronize its authorized dealers as being proper sources from which to procure genuine Ford, Mercury, Lincoln or Lincoln-Zephyr parts, Dealer will not, in any place of business upon which Dealer displays Company's trade mark or trade name, or any sign or indication that such place of business is that of an authorized Ford Dealer, or an authorized Ford Service Station, sell any replacement parts for Company products except such genuine parts, nor shall Dealer recommend or allow to be recommended in such place of business, nor use in servicing Company products for owners thereof any but genuine Ford, Mercury, Lincoln or Lincoln-Zephyr parts except in cases where Company is unable to supply same or owner has specifically requested Dealer to use some other part.

ADVERTISING

(e) Not to publish or to use advertising matter or to use sales policies in any manner in connection with Dealer's business as a Ford Dealer which are detrimental to the Company, to other Ford Dealers, or to the public, or to which Company may object as being detrimental to its good name or good will.

CUSTOMERS' DEPOSITS

(f) That Dealer will accept down payments of cash or used automobiles in anticipation of future deliveries of passenger automobiles, commercial automobiles, or trucks only in trust, and to keep all such cash in a separate earmarked fund not commingled with Dealer's own funds, and to hold title to such used automobile only in trust until the transaction for the new passenger automobile, commercial automobile, or truck is consummated and not to place any lien thereon, or to sell the same without at the time placing the amount of the trade-in allowance of such used automobile in such earmarked trust fund in lieu of said used automobile in trust inasmuch as failure to apply monies and properties paid or transferred to an authorized Ford Dealer in anticipation of future deliveries to the purpose for which the payment or transfer is made is likely to injure the good name and good will of Company, Dealer agrees to enter into an agreement with such prospective customers at the time such payment of transfer of title of property is made binding, Dealer to hold such monies or property in trust as provided above.

TERMINATION

10. This agreement may be terminated at any time at the will of either party by written notice to the other party given either by registered mail or by personal delivery and such termination shall operate to cancel all orders for Company products thereto received by Company and not delivered. It is, however, agreed in connection with such right of termination:

NOTICE OF INTENTION

(a) That in case of termination by Company, notice of intention to so terminate shall be given to Dealer sixty (60) days prior to actual termination date by either of the methods of termination mentioned above, except that no prior notice need be given in case of death, insolvency or bankruptcy of Dealer, or of appointment by a court of a receiver, trustee or custodian for Dealer or Dealer's business or of an assignment by Dealer for benefit of creditors, or of an assignment or attempted assignment of interest by Dealer, or in event Dealer is a partnership, of disagreement between partners, or in event Dealer is a corporation, of litigation or proceedings preventing corporation from electing in due course its Board of Directors, appointing its officers, or preventing its Board of Directors or officers from acting or otherwise functioning in an ordinary course of business.

SUMS DUE COMPANY

(b) That, on termination of this agreement, Dealer will immediately pay to Company all sums due Company at the time of such termination.

REMOVAL OF SIGNS

(c) That, on termination of this agreement, Dealer will immediately remove, at Dealer's expense, all Ford signs from Dealer's place of business and discontinue all advertising of Company's products.

ASSIGNMENT OF UNFILLED ORDERS

(d) That, on termination of this agreement, Dealer will immediately turn over or assign by appropriate documents to Company, or its nominee, all unfilled retail orders and deposits made thereon and names and addresses of its service customers and prospective purchasers, it being intended that this clause shall operate immediately upon termination of this agreement as an assignment of Dealer's rights and interests in and to said orders and deposits.

REPURCHASE OF AUTOMOBILES

(e) That, in event of termination of this agreement by Company, Company shall repurchase immediately from Dealer, and Dealer shall sell to Company, all new unused passenger automobiles, commercial automobiles and trucks of current model in Dealer's possession at time of such termination which were purchased from Company after the thirtieth day prior to giving notice of intention to terminate this agreement, as determined by date of Company's invoice, at price paid Company by Dealer (unless there has been a price reduction and then at current price to Dealer, less cost of transportation of the units from Dealer's place of business to Company's branch under which Dealer operates, and provided such units are in first class saleable condition. In event of termination of this agreement by either Dealer or Company, Company shall have the right and option at its election to repurchase any new and unused passenger automobiles, commercial automobiles or trucks in Dealer's possession at time of termination on like terms.

REPURCHASE OF PARTS AND ACCESSORIES

(f) That, in event of termination of this agreement by Company, Company shall repurchase immediately from Dealer and Dealer agrees to sell to Company all new and undamaged genuine Ford, Mercury, Lincoln and Lincoln-Zephyr parts and approved accessories purchased from Company by Dealer after the sixtieth day prior to date of giving notice of intention to terminate this agreement at the prices paid for such parts by Dealer less ten per cent (10%) and less transportation charges thereon from Dealer's place of business to Company's branch under which Dealer operates provided such parts and accessories are in first class saleable condition. Dealer also agrees to carefully pack and box at Dealer's own expense and ship to Company all parts and accessories which Company repurchases under the terms of this subparagraph (f). In case Dealer fails to so box and ship such goods, Company may do so and deduct the expenses thereof from the repurchase price. In event of termination of this agreement by either Dealer or Company, Company may at its option examine the stock of Dealer and select any such genuine parts and approved accessories that Dealer may have at the time of termination and Company shall have the right and option to repurchase on like terms such genuine parts and approved accessories, whether or not damaged as the Company in its absolute discretion may elect.

EVIDENCE OF TITLE

(g) That, in case of repurchase of Company products by Company as provided in subparagraphs (e) and (f) above, Dealer shall furnish satisfactory evidence of clear title to such property and shall execute and deliver proper instruments of title and in event such property is subject to lien an arrangement shall be made whereby Company will procure such property for such repurchase price with such lien discharged.

PRIVILEGE TO ENTER PREMISES

(h) That Dealer hereby expressly consents that Company may enter premises of Dealer to take possession of all or any part of Company products mentioned in subparagraphs (e) and (f) above upon agreeing to pay the repurchase price as provided above.

MISCELLANEOUS PROVISIONS

(11) It is expressly understood and agreed :

MICHIGAN AGREEMENT

(a) That this agreement has been first signed by Dealer and sent to Company's office at Dearborn, Michigan, for final approval and execution and has subsequently been there signed and delivered on behalf of Company, and the parties hereto intend it to be executed as a Michigan agreement and construed in accordance with the laws of the State of Michigan.

COMPANY'S AGENTS

(b) That Dealer acknowledges notice that no one except the President, Vice president, Secretary, or Assistant Secretary of Company is authorized to execute this agreement on behalf of Company or in any manner to enlarge, vary or modify its terms or to terminate it, and they only by an instrument in writing. This agreement shall not bind Company until it is signed by one of the officers named above.

REPRESENTATIONS AND DATE EFFECTIVE

(c) That Dealer admits that no representations or statements have been made to him on behalf of Company which would in any way tend to change or to modify the terms of any of them of this agreement, or which would in any manner prevent this agreement from going into full force and effect upon being executed by Company.

TERMINATION OF PRIOR AGREEMENTS

(d) That this agreement terminates and supersedes all prior Ford Sales Agreements, if any, between the parties hereto.

ASSIGNMENT

(e) That this agreement may not be assigned by Dealer without the written assent of Company, executed by one of the officers authorized to execute this agreement.

SEPARABILITY

(f) That, if any provision of this agreement is invalid or unenforceable, this agreement shall be considered divisible as to such provision and the remainder of the agreement valid and binding as though such provision were not included therein.

LIMITATION OF COMPANY'S LIABILITY

(12) The requirements and limitations of this agreement as to the facilities to be supplied by Dealer, as to the conduct of the business of dealing in Company products and as to relationships between Dealer and others are intended only to protect the good name and good will and business of Company, to assure Company that Company products will be made available to public and that service facilities will be made available to ultimate users of its products, and to assure or inform Company of the financial stability of Dealer. It is distinctly understood that this agreement contemplates that Dealer will acquire Dealer's own plant and facilities in accordance with Dealer's own discretion and will purchase Company products as Dealer's own and resell them to customers selected by Dealer, all in conformity with the requirements and limitations herein specified but otherwise in Dealer's own discretion. Nothing herein contained shall impose any liability on Company for any expenditures made or incurred by Dealer in preparation for performance or in performance of this agreement.

IN WITNESS WHEREOF the parties have executed this agreement as of the day and year first above written.

TENVCORDE MOTOR CO.,
By L. T. Tenvcorde,
Pres. & Sec.

FORD MOTOR COMPANY,
By A. L. Woulton, Assistant Secretary.



**TEXAS
SALES
AGREEMENT**

BETWEEN

Ford Motor Company

AND

Ford Motor Company.

District

FORD TEXAS SALES AGREEMENT

1 **AGREEMENT** made at Dearborn, State of Michigan, as of this.....
2 day of....., 19....., by and between Ford Motor Company,
3 a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter
4 called "Company"), and.....
5 (State whether an individual,
6 partnership, or corporation. If the latter, show name of state in which incorporated)
7 with principal place of business at.....
8 (Street Address)
9 State of.....
10 (City and Postal Zone) (County)
11 (hereinafter called "Dealer").

9 In Consideration of the promises herein made to each other by the parties hereto it is
10 agreed as follows:

SELLING RIGHTS

(1) Company agrees to sell and Dealer agrees to purchase, for resale, Ford passenger automobiles, commercial automobiles, trucks, and parts and accessories therefor, and parts and accessories for Mercury and Lincoln automobiles (all of which for convenience are sometimes hereinafter collectively referred to as "Company Products"), upon the terms and conditions hereinafter specifically set forth and subject to the right reserved by Company to sell to other dealers and direct to retail purchasers in the United States without obligation of any kind to Dealer on any such sale. It is intended that this agreement shall govern all relationships between Company and Dealer unless some such relationships shall be governed by another agreement in writing duly executed by an officer of Company.

PRICES

(2) Company will sell its products to Dealer at such prices as are from time to time established by Company plus Company's charge for distribution and delivery and a sum equivalent to, or in reimbursement for, any taxes imposed by any law of the United States, any state, or municipality, or other taxing authority upon the manufacture, ownership, use, or sale of any of Company products sold under this agreement, if not included in the established price.

TERMS AND TITLE

(8) Payment by Dealer is to be in cash, except in cases where the invoice shows sale to be on credit. Title to all Company products, except in a case where the invoice shows sale to be on credit, shall be and remain with Company until actual receipt of the full purchase price in cash by Company. In case Dealer makes payment by check or by paying draft attached to bill of lading, Dealer shall pay the cost of exchange, if any. Receipt from Dealer or Dealer's

31 bank of any check, draft or other commercial paper shall not constitute payment until Company
32 has received cash in the full amount thereof. Until Company has received cash in full payment
33 of any such check, draft or other commercial paper, its right to retake and resell Company
34 products for which such paper is issued shall continue.

CHANGE IN PRICES

35 (4) Prices of all Company products shall be subject to change from time to time; however,
36 Company agrees that, in the event of a price reduction on current models of its Ford passenger
37 automobiles, commercial automobiles, or trucks, it will reimburse Dealer to the extent of the
38 difference between the price at which such product was purchased and the reduced price to Dealer
39 on any new, unused and unsold unit of said products in Dealer's stock purchased from Company
40 during the period of sixty (60) days next preceding the change in price, as determined by date
41 of Company's invoice, provided that Dealer files written claim for refund within ten (10) days
42 after announcement by Company of such price reduction. Such claim shall be supported by
43 adequate proof and subject to Company audit. Dealer shall not be entitled to any reimbursement
44 under this paragraph (4) on account of any reduction in the amount of the Company's charge for
45 distribution and delivery, or on account of any reduction in the amount of taxes.

OPERATION OF BUSINESS

46 (5) Dealer agrees to maintain a place of business and only one place of business, unless
47 repair shops or used automobile outlets and/or neighborhood service stations are separate
48 from salesroom, located in a place and equipped in a manner acceptable to Company; to display
49 conspicuously thereon approved Ford signs; to install and maintain therein the tools, machinery
50 and equipment recommended by Company; to employ sufficient, competent salesmen to solicit
51 adequately all potential purchasers of Company products in the community in which Dealer
52 is located, and sufficient, competent service mechanics to render prompt, efficient service to
53 owners of Company products and to render such service to any owners of Company products
54 engaging such service, including the service to which a purchaser of such products from Dealer
55 is entitled; to install and maintain an accounting system in accordance with Ford Dealers
56 Accounting Procedure Manual as approved by Company; to furnish Company at regular inter-
57 vals as designated by Company accurate financial statements reflecting the true financial condi-
58 tion of Dealer's business on standard forms provided by Company for that purpose; to allow
59 representatives of Company, at all reasonable times and from time to time, to examine all records,
60 contracts and accounts covering sale or service of Company products by Dealer and to examine
61 Dealer's stock and place of business and to test Dealer's equipment and facilities to the end that
62 Company may be assured that Dealer is carrying out all of the terms of this agreement and is
63 properly equipped to render adequate service to owners or operators of Company products; to
64 submit promptly to Company, Dealer's Ten-Day Reports accurately and fully prepared on forms
65 provided by Company therefor and on the dates specified therein.

TRADE-MARKS AND NAMES

66 (6) Dealer further agrees not to use the words "Ford," "Fordson," "Lincoln," "Zephyr,"
67 "Mercury," or any trade-mark or trade name adopted by Company, or coined words or com-
68 binations containing the same, in connection with any business conducted by Dealer other
69 than dealing in Company products, and under no circumstances as a part of Dealer's firm
70 name or trade name; not to contest the validity of any patent used or claimed by Company,
71 nor to contest the right of Company to exclusive use of any trade-mark or trade name at any
72 time adopted by Company.

DEALER NOT TO ACT AS AGENT

73 (7) Dealer further agrees not to make any representation or warranty concerning Com-
74 pany products on behalf of Company, but to refer purchasers to "Manufacturer's War-
75 ranty" printed on back of Retail Buyer's Order form supplied by Company and not in any
76 manner to attempt to assume or create obligations on behalf of Company or in any manner
77 attempt to act as agent of Company.

DEALER'S STOCK

78 (8) Dealer further agrees:
79 (a) To maintain a stock of passenger automobiles, commercial automobiles and trucks of
80 current model equivalent to between eight and twelve per cent (8% and 12%) of Dealer's retail
81 deliveries of such units during preceding twelve (12) months, varying between those percent-
82 ages in different months in accordance with the estimated normal seasonal requirements of
83 Dealer for the different months; to maintain a stock of genuine Ford parts and approved
84 accessories of an assortment reasonably comparable to the current demand, equivalent to at least
85 one-sixth (1/6th) of the sales of parts and accessories by Dealer during the previous twelve
86 (12) months, based on cost to Dealer. In case Dealer has not been operating under a Ford
87 Sales Agreement during the twelve (12) months preceding the date of this agreement, Dealer
88 agrees, until such time as Dealer has been operating under a Ford Sales Agreement for twelve
89 (12) months, to maintain at all times a stock of new Ford passenger automobiles, commercial
90 automobiles and trucks equivalent to the estimated sales during the next thirty (30) days and of
91 parts and accessories equivalent to the estimated requirements for sale and service during the
92 next sixty (60) days. The requirement that Dealer maintain adequate stocks shall be depend-
93 ent on Company's ability to supply the same.

ORDERS

94 (b) To enable Company to schedule its production effectively, Dealer shall furnish Com-
95 pany, prior to the tenth (10th) day of each month, with an order for the estimated number of
96 passenger automobiles, commercial automobiles and trucks which Dealer will need for sale
97 and to maintain stocks during the succeeding month in accordance with the provisions stated
98 in subparagraph (a) of paragraph (8) above, and will on dates designated by Company furnish
99 Company with orders on forms provided by Company therefor for Dealer's estimated require-
100 ments of parts and accessories for sale and to maintain stocks in accordance with the provisions
101 stated above. Company agrees to give careful consideration to all orders received from Dealer
102 but expressly reserves the right to follow or depart from such orders, and Company shall in no
103 way be liable for failure to ship, or for delay in shipments however caused, or for shipping
104 over routes other than specified by Dealer.

DEMONSTRATORS

105 (c) To have available at all times in good running order and presentable condition for
106 demonstration purposes, an adequate number of Ford units of current model (but at no time
107 less than one passenger automobile and one commercial automobile or truck).

GOOD WILL

108 (9) Dealer further agrees:

GENUINE PARTS

109 (a) That in view of the fact Company has in its advertising consistently urged
110 the ultimate users of Ford, Mercury and Lincoln automobiles or trucks to patronize
111 its authorized dealers as being proper sources from which to procure genuine Ford
112 Mercury and Lincoln parts, Dealer will not, in any place of business upon which

118 Dealer displays Company's trade-marks or trade names, or any sign or indication that
114 such place of business is that of an authorized Ford Dealer, or an authorized
115 Ford Service Station, sell, offer for sale, or use in the repair of such automob-
116 iles and trucks as genuine new Ford, Mercury or Lincoln parts, any parts which
117 are not in fact genuine new Ford, Mercury or Lincoln parts manufactured by or
118 for Company.

ADVERTISING

119 (b) Not to publish or to use advertising matter or to use sales policies in any manner in
120 connection with Dealer's business as a Ford Dealer which are detrimental to the Company,
121 or to the public, or to which Company may object as being detrimental to its good name or
122 good will.

CUSTOMERS' DEPOSITS

123 (c) To accept down payments of cash or used automobiles in anticipation of future deliveries
124 of passenger automobiles, commercial automobiles, or trucks only in trust, and to keep all such
125 cash in a separate earmarked fund not commingled with Dealer's own funds, and to hold title to
126 such used automobile only in trust until the transaction for the new passenger automobile,
127 commercial automobile, or truck is consummated and not to place any lien thereon, or to sell the
128 same without at the time placing the amount of the trade-in allowance of such used automobile
129 in such earmarked trust fund in lieu of said used automobile in trust. Inasmuch as failure to
130 apply monies and properties paid or transferred to an authorized Ford Dealer in anticipation
131 of future deliveries to the purpose for which the payment or transfer is made is likely to injure
132 the good name and good will of Company, Dealer agrees to enter into an agreement with such
133 prospective customers at the time such payment or transfer of title of property is made binding
134 Dealer to hold such monies or property in trust as provided above.

TERMINATION

135 (10) This agreement may be terminated at any time at the will of either party by written
136 notice to the other party given either by registered mail or by personal delivery and such termina-
137 tion shall operate to cancel all orders for Company products theretofore received by Company
138 and not delivered. It is, however, agreed in connection with such right of termination:

NOTICE OF INTENTION

139 (a) That in case of termination by Company, notice of intention to so terminate shall
140 be given to Dealer sixty (60) days prior to actual termination date by either of the methods of
141 termination mentioned above, except that no prior notice need be given in case of death, in-
142 solvency or bankruptcy of Dealer, or of appointment by a court of a receiver, trustee or custodian
143 for Dealer or Dealer's business, or in event of Dealer's failure to keep his place of business open
144 during the hours customary in the trade, or of an assignment by Dealer for benefit of creditors,
145 or of an assignment or attempted assignment of interest by Dealer, or in event Dealer is a partner-
146 ship, of disagreement between partners, or in event Dealer is a corporation, of litigation or pro-
147 ceedings preventing corporation from electing in due course its Board of Directors, appointing its
148 officers, or preventing its Board of Directors or officers from acting or otherwise functioning
149 in an ordinary course of business.

SUMS OWING COMPANY

150 (b) That, on termination of this agreement, Dealer will immediately pay to Company
151 all sums owing Company at the time of such termination.

REMOVAL OF SIGNS

152 (c) That, on termination of this agreement, Dealer will immediately remove, at Dealer's
153 expense, all Ford signs from Dealer's place of business and discontinue all advertising of Company
154 products.

ASSIGNMENT OF UNFILLED ORDERS

155 (d) That, on termination of this agreement, Dealer will immediately turn over or assign
156 by appropriate documents to Company, or its nominee, all unfilled retail orders and deposits
157 made thereon and names and addresses of its service customers and prospective purchasers,
158 it being intended that this clause shall operate immediately upon termination of this agree-
159 ment as an assignment of Dealer's rights and interests in and to said orders and deposits.

REPURCHASE OF AUTOMOBILES

160 (e) That, in event of termination of this agreement by Company, Company shall re-
161 purchase immediately from Dealer, and Dealer shall sell to Company, all new unused passenger
162 automobiles, commercial automobiles and trucks of current model in Dealer's possession at
163 time of such termination which were purchased from Company after the thirtieth day prior to
164 giving notice of intention to terminate this agreement, as determined by date of Company's
165 invoice, at price paid Company by Dealer (unless there has been a price reduction and then at
166 current price to Dealer) less cost of transportation of the units from Dealer's place of business to
167 Company's branch under which Dealer operates, and provided such units are in first class sale-
168 able condition. In event of termination of this agreement by either Dealer or Company, Company
169 shall have the right and option at its election to repurchase any new and unused passenger auto-
170 mobiles, commercial automobiles or trucks in Dealer's possession at time of termination on like terms.

REPURCHASE OF PARTS AND ACCESSORIES

171 (f) That, in event of termination of this agreement by Company, Company shall re-
172 purchase immediately from Dealer and Dealer agrees to sell to Company all new and undamaged
173 genuine Ford, Mercury and Lincoln parts and approved accessories purchased from Company by
174 Dealer after the sixtieth day prior to date of giving notice of intention to terminate this agreement
175 at the prices paid for such parts by Dealer, less transportation charges thereon from Dealer's place
176 of business to Company's branch under which Dealer operates provided such parts and ap-
177 proved accessories are in first class saleable condition. Dealer also agrees to carefully pack and
178 box at Dealer's own expense and ship to Company all parts and approved accessories which
179 Company repurchases under the terms of this subparagraph (f). In case Dealer fails to
180 so box and ship such goods, Company may do so and deduct the expenses thereof from the repur-
181 chase price. In event of termination of this agreement by either Dealer or Company, Company
182 may at its option examine the stock of Dealer and select any such genuine parts and approved
183 accessories that Dealer may have at the time of termination and Company shall have the right
184 and option to repurchase on like terms such genuine parts and approved accessories, whether
185 or not damaged as the Company in its absolute discretion may elect.

EVIDENCE OF TITLE

186 (g) That, in case of repurchase of Company products by Company as provided in sub-
187 paragraphs (e) and (f) above, Dealer shall furnish satisfactory evidence of clear title to such
188 property and shall execute and deliver proper instruments of title and in event such property
189 is subject to lien an arrangement shall be made whereby Company will procure such property
190 for such repurchase price with such lien discharged.

PRIVILEGE TO ENTER PREMISES

191 (h) That Dealer hereby expressly consents that Company may enter premises of Dealer
192 to take possession of all or any part of Company products mentioned in subparagraphs (e)
193 and (f) above upon agreeing to pay the repurchase price as provided above.

MISCELLANEOUS PROVISIONS

194 (11) It is expressly understood and agreed:

MICHIGAN AGREEMENT

195 (a) That this agreement has been first signed by Dealer and sent to Com-
196 pany's office at Dearborn, Michigan, for final approval and execution and has
197 subsequently been there signed and delivered on behalf of Company, and the
198 parties hereto intend it to be executed as a Michigan agreement and construed
199 in accordance with the laws of the State of Michigan.

COMPANY'S AGENTS

200 (b) That Dealer acknowledges notice that no one except the President,
201 Vice-President, Secretary, or Assistant Secretary of Company is authorized to
202 execute this agreement on behalf of Company or in any manner to enlarge, vary
203 or modify its terms or to terminate it, and they only by an instrument in writing.
204 This agreement shall not bind Company until it is signed by one of the officers
205 named above.

REPRESENTATIONS AND DATE EFFECTIVE

206 (c) That Dealer admits that no representations or statements have been
207 made to him in behalf of Company which would in any way tend to change or to
208 modify the terms or any of them of this agreement, or which would in any manner
209 prevent this agreement from going into full force and effect upon being executed
210 by Company.

TERMINATION OF PRIOR AGREEMENTS

211 (d) That this agreement terminates and supersedes all prior Ford Sales
212 Agreements, if any, between the parties hereto.

ASSIGNMENT

213 (e) That this agreement may not be assigned by Dealer without the written
214 assent of Company, executed by one of the officers authorized to execute this
215 agreement.

SEPARABILITY

216 (f) That, if any provision of this agreement is invalid or unenforceable or is
217 prohibited by the law of the state where it is to be performed, this agreement shall
218 be considered divisible as to such provision and such provision shall be inoperative
219 and shall not be part of the consideration moving from either party hereto to the
220 other and the remainder of this agreement shall be valid and binding and of like
221 effect as though such provision were not included herein.

LIMITATION OF COMPANY'S LIABILITY

222 (12) The requirements and limitations of this agreement as to the facilities to
223 be supplied by Dealer, as to the conduct of the business of dealing in Company
224 products and as to relationships between Dealer and others are intended only to
225 protect the good name and good will and business of Company, to assure Com-
226 pany that Company products will be made available to public and that service

227 facilities will be made available to ultimate users of its products, and to assure or
228 inform Company of the financial stability of Dealer. It is distinctly understood that
229 this agreement contemplates that Dealer will acquire Dealer's own plant and facilities
230 in accordance with Dealer's own discretion and will purchase Company products as
231 Dealer's own and resell them to customers selected by Dealer; all in conformity with
232 the requirements and limitations herein specified but otherwise in Dealer's own
233 discretion. Nothing herein contained shall impose any liability on Company for any
234 expenditures made or incurred by Dealer in preparation for performance or in
235 performance of this agreement.

236 IN WITNESS WHEREOF the parties have executed this agreement as of the
237 day and year first above written.

Ford Motor Company,

(DEALER'S TRADE NAME)

By-----
ASSISTANT SECRETARY

By-----
(SIGNATURE AND TITLE)



**SALES
AGREEMENT**

BETWEEN

Ford Motor Company

AND

FORM 925
REV. 6-20-49

Ford Motor Company

_____ District

FORD SALES AGREEMENT

1 AGREEMENT made at Dearborn, State of Michigan, as of this _____
2 day of _____, 19_____, by and between Ford Motor Company,
3 a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter
4 called "Company"), and _____

(State whether an individual,

5 _____
partnership, or corporation. If the latter, show name of state in which incorporated)

6 with principal place of business at _____
(Street Address)

7 _____, State of _____
(City and Postal Zone) (County)

8 (hereinafter called "Dealer").

9 In Consideration of the promises herein made to each other by the parties hereto it is
10 agreed as follows:

SELLING RIGHTS

11 (1) Company agrees to sell and Dealer agrees to purchase, for resale, Ford pas-
12 senger automobiles, commercial automobiles, trucks, and parts and accessories therefor,
13 and parts and accessories for Mercury and Lincoln automobiles (all of which for con-
14 venience are sometimes hereinafter collectively referred to as "Company Products"),
15 upon the terms and conditions hereinafter specifically set forth and subject to the right
16 reserved by Company to sell to other dealers and direct to retail purchasers in the United
17 States without obligation of any kind to Dealer on any such sale. It is intended that this
18 agreement shall govern all relationships between Company and Dealer unless some such
19 relationships shall be governed by another agreement in writing duly executed by an
20 officer of Company.

PRICES

21 (2) Company will sell its products to Dealer at such prices as are from time to time estab-
22 lished by Company plus Company's charge for distribution and delivery and a sum equivalent
23 to, or in reimbursement for, any taxes imposed by any law of the United States, any state, or
24 municipality, or other taxing authority upon the manufacture, ownership, use, or sale of any
25 of Company products sold under this agreement, if not included in the established price.

TERMS AND TITLE

26 (3) Payment by Dealer is to be in cash, except in cases where the invoice shows sale to
27 be on credit. Title to all Company products, except in a case where the invoice shows sale to
28 be on credit, shall be and remain with Company until actual receipt of the full purchase price
29 in cash by Company. In case Dealer makes payment by check or by paying draft attached
30 to bill of lading, Dealer shall pay the cost of exchange, if any. Receipt from Dealer or Dealer's
31 bank of any check, draft or other commercial paper shall not constitute payment until Company
32 has received cash in the full amount thereof. Until Company has received cash in full payment

33 of any such check, draft or other commercial paper, its right to retake and resell Company
34 products for which such paper is issued shall continue.

CHANGE IN PRICES

35 (4) Prices of all Company products shall be subject to change from time to time; however,
36 Company agrees that, in the event of a price reduction on current models of its Ford passenger
37 automobiles, commercial automobiles, or trucks, it will reimburse Dealer to the extent of the
38 difference between the price at which such product was purchased and the reduced price to Dealer
39 on any new, unused and unsold unit of said products in Dealer's stock purchased from Company
40 during the period of sixty (60) days next preceding the change in price, as determined by date
41 of Company's invoice, provided that Dealer files written claim for refund within ten (10) days
42 after announcement by Company of such price reduction. Such claim shall be supported by
43 adequate proof and subject to Company audit. Dealer shall not be entitled to any reimbursement
44 under this paragraph (4) on account of any reduction in the amount of the Company's charge for
45 distribution and delivery, or on account of any reduction in the amount of taxes.

OPERATION OF BUSINESS

46 (5) Dealer agrees to maintain a place of business and only one place of business, unless
47 repair shops or used automobile outlets and/or neighborhood service stations are separate
48 from salesroom, located in a place and equipped in a manner acceptable to Company; to display
49 conspicuously thereon approved Ford signs; to install and maintain therein the tools, machinery
50 and equipment recommended by Company; to employ sufficient, competent salesmen to solicit
51 adequately all potential purchasers of Company products in the community in which Dealer
52 is located, and sufficient, competent service mechanics to render prompt, efficient service to
53 owners of Company products and to render such service to any owners of Company products
54 engaging such service, including the service to which a purchaser of such products from Dealer,
55 or from another Authorized Ford Dealer, is entitled; to install and maintain an accounting
56 system in accordance with Ford Dealers Accounting Procedure Manual as approved by Com-
57 pany; to furnish Company at regular intervals as designated by Company accurate financial
58 statements reflecting the true financial condition of Dealer's business on standard forms pro-
59 vided by Company for that purpose; to allow representatives of Company, at all reasonable times
60 and from time to time, to examine all records, contracts and accounts covering sale or service of
61 Company products by Dealer and to examine Dealer's stock and place of business and to test
62 Dealer's equipment and facilities to the end that Company may be assured that Dealer is carry-
63 ing out all of the terms of this agreement and is properly equipped to render adequate service to
64 owners or operators of Company products; to submit promptly to Company, Dealer's Ten-Day
65 Reports accurately and fully prepared on forms provided by Company therefor and on the
66 dates specified therein.

TRADE-MARKS AND NAMES

67 (6) Dealer further agrees not to use the words "Ford," "Fordson," "Lincoln," "Zephyr,"
68 "Mercury," or any trade-mark or trade name adopted by Company, or coined words or com-
69 binations containing the same, in connection with any business conducted by Dealer other
70 than dealing in Company products, and under no circumstances as a part of Dealer's firm
71 name or trade name; not to contest the validity of any patent used or claimed by Company,
72 nor to contest the right of Company to exclusive use of any trade-mark or trade name at any
73 time adopted by Company.

DEALER NOT TO ACT AS AGENT

74 (7) Dealer further agrees not to make any representation or warranty concerning Com-
75 pany products on behalf of Company, but to refer purchasers to "Manufacturer's Warranty"

76 printed on back of Retail Buyer's Order form supplied by Company and not in any manner
77 to attempt to assume or create obligations on behalf of Company or in any manner attempt
78 to act as agent of Company.

DEALER'S STOCK

79 (8) Dealer further agrees:

80 (a) To maintain a stock of passenger automobiles, commercial automobiles and trucks of
81 current model equivalent to between eight and twelve per cent (8% and 12%) of Dealer's retail
82 deliveries of such units during preceding twelve (12) months, varying between those percent-
83 ages in different months in accordance with the estimated normal seasonal requirements of
84 Dealer for the different months; to maintain a stock of genuine Ford parts and approved acces-
85 sories of an assortment reasonably comparable to the current demand, equivalent to at least
86 one-sixth (1/6th) of the sales of parts and accessories by Dealer during the previous twelve
87 (12) months, based on cost to Dealer. In case Dealer has not been operating under a Ford Sales
88 Agreement during the twelve (12) months preceding the date of this agreement, Dealer agrees,
89 until such time as Dealer has been operating under a Ford Sales Agreement for twelve (12)
90 months, to maintain at all times a stock of new Ford passenger automobiles, commercial auto-
91 mobiles and trucks equivalent to the estimated sales during the next thirty (30) days and of
92 parts and accessories equivalent to the estimated requirements for sale and service during the
93 next sixty (60) days. The requirement that Dealer maintain adequate stocks shall be dependent
94 on Company's ability to supply the same.

ORDERS

95 (b) To enable Company to schedule its production effectively, Dealer shall furnish Com-
96 pany, prior to the tenth (10th) day of each month, with an order for the estimated number of
97 passenger automobiles, commercial automobiles and trucks which Dealer will need for sale and
98 to maintain stocks during the succeeding month in accordance with the provisions stated in
99 subparagraph (a) of paragraph (8) above, and will on dates designated by Company furnish
100 Company with orders on forms provided by Company therefor for Dealer's estimated require-
101 ments of parts and accessories for sale and to maintain stocks in accordance with the provisions
102 stated above. Company agrees to give careful consideration to all orders received from Dealer
103 but expressly reserves the right to follow or depart from such orders, and Company shall in no
104 way be liable for failure to ship, or for delay in shipments however caused, or for shipping over
105 routes other than specified by Dealer.

DEMONSTRATORS

106 (c) To have available at all times in good running order and presentable condition for
107 demonstration purposes, an adequate number of Ford units of current model (but at no time
108 less than one passenger automobile and one commercial automobile or truck).

TRADE PRACTICES

109 (9) Dealer further agrees:

110 (a) To avoid in every way such trade practices in connection with Dealer's competition
111 with other Ford Dealers and in selling Company products to the public as are injurious to Com-
112 pany's good name and good will or are detrimental to public interest.

RETAIL PRICES

113 (b) Insofar as it is lawful for Dealer so to agree, not to resell Company products bearing
114 Company's trade-mark or trade name at less than retail prices established for Dealer's city or
115 town from time to time by Company, except in cases where such goods have been damaged, or
116 have become obsolete, or are about to become obsolete because of change in models, or in the case
117 of sales to Company or its nominees, or to other authorized Ford Dealers, or Associate Ford

118 Dealers, and except when a discount is warranted by quantity purchases unless such a discount is
119 in violation of law. Dealer agrees, if requested by Company, to display prominently in Dealer's
120 showroom a chart showing current retail prices as established by Company for Dealer's city or town.

SERVICE COMMISSION

121 (c) That as convenient Authorized Ford Service must be made available to users of Ford
122 passenger automobiles, commercial automobiles and trucks and as a means to that end, in case
123 Dealer sells a new passenger automobile, commercial automobile or truck to a buyer residing
124 in another city or town where an authorized direct Ford Dealer is located or operates a Neighbor-
125 hood Service Station under a Supplementary Sales Agreement with Company, or to a buyer
126 residing in another incorporated municipality in which there is no such Ford Dealer or Neighbor-
127 hood Service Station, but which municipality is contiguous to a city or town in which an
128 authorized direct Ford Dealer is located, Dealer shall pay a service commission of Thirty Dollars
129 (\$30.00) to the dealer in the town where purchaser resides within five (5) days after the unit
130 is delivered to buyer with the understanding that such other dealer will render to such pur-
131 chaser the service which a new car purchaser ordinarily receives from the delivering dealer.
132 Upon receipt of Service Commission by Dealer from another Ford dealer, Dealer shall render to
133 purchaser the service which a new car purchaser ordinarily receives from the delivering dealer.
134 In case purchaser is a resident of a multiple dealer metropolitan area, as defined below, and
135 Dealer's place of business is not in that area, Dealer shall pay such service commission to the
136 authorized direct Ford Dealer located nearest to place of residence of purchaser. The require-
137 ment of this subparagraph (c) that Dealer pay a service commission shall not apply, if Dealer
138 is located in a multiple dealer metropolitan area (meaning thereby a city and such surrounding
139 territory as Company in its absolute discretion may from time to time include within the metro-
140 politan area of that city) and sells to a purchaser residing anywhere within such metropolitan
141 area, to sales to owners of fleets of five (5) or more automobiles and/or trucks, or to sales to
142 purchasers temporarily residing for more than thirty (30) days at the place where Dealer is
143 located. Company will act as umpire between dealers in connection with these service com-
144 missions, but does not guarantee payment of any such service commissions.

GENUINE PARTS

145 (d) That in view of the fact Company has in its advertising consistently urged
146 the ultimate users of Ford, Mercury and Lincoln automobiles or trucks to patronize
147 its authorized dealers as being proper sources from which to procure genuine Ford,
148 Mercury and Lincoln parts, Dealer will not, in any place of business upon which
149 Dealer displays Company's trade-marks or trade names, or any sign or indication that
150 such place of business is that of an authorized Ford Dealer, or an authorized
151 Ford Service Station, sell, offer for sale, or use in the repair of such automo-
152 biles and trucks as genuine new Ford, Mercury or Lincoln parts, any parts which
153 are not in fact genuine new Ford, Mercury or Lincoln parts manufactured by or
154 for Company.

ADVERTISING

155 (e) Not to publish or to use advertising matter or to use sales policies in any manner in
156 connection with Dealer's business as a Ford Dealer which are detrimental to the Company, to
157 other Ford Dealers, or to the public, or to which Company may object as being detrimental to
158 its good name or good will.

CUSTOMERS' DEPOSITS

159 (f) To accept down payments of cash or used automobiles in anticipation of future deliveries
160 of passenger automobiles, commercial automobiles, or trucks only in trust, and to keep all such
161 cash in a separate earmarked fund not commingled with Dealer's own funds, and to hold title to
162 such used automobile only in trust until the transaction for the new passenger automobile,
163 commercial automobile, or truck is consummated and not to place any lien thereon, or to sell the
164 same without at the time placing the amount of the trade-in allowance of such used automobile

165 in such earmarked trust fund in lieu of said used automobile in trust. Inasmuch as failure to
166 apply monies and properties paid or transferred to an authorized Ford Dealer in anticipation
167 of future deliveries to the purpose for which the payment or transfer is made is likely to injure
168 the good name and good will of Company, Dealer agrees to enter into an agreement with such
169 prospective customers at the time such payment or transfer of title of property is made binding
170 Dealer to hold such monies or property in trust as provided above.

TERMINATION

171 (10) This agreement may be terminated at any time at the will of either party by written
172 notice to the other party given either by registered mail or by personal delivery and such termina-
173 tion shall operate to cancel all orders for Company products theretofore received by Company
174 and not delivered. It is, however, agreed in connection with such right of termination:

NOTICE OF INTENTION

175 (a) That in case of termination by Company, notice of intention to so terminate shall
176 be given to Dealer sixty (60) days prior to actual termination date by either of the methods of
177 termination mentioned above, except that no prior notice need be given in case of death, in-
178 solvency or bankruptcy of Dealer, or of appointment by a court of a receiver, trustee or custodian
179 for Dealer or Dealer's business, or in event of Dealer's failure to keep his place of business open
180 during the hours customary in the trade, or of an assignment by Dealer for benefit of creditors,
181 or of an assignment or attempted assignment of interest by Dealer, or in event Dealer is a partner-
182 ship, of disagreement between partners, or in event Dealer is a corporation, of litigation or pro-
183 ceedings preventing corporation from electing in due course its Board of Directors, appointing its
184 officers, or preventing its Board of Directors or officers from acting or otherwise functioning
185 in an ordinary course of business.

SUMS OWING COMPANY

186 (b) That, on termination of this agreement, Dealer will immediately pay to Company
187 all sums owing Company at the time of such termination.

REMOVAL OF SIGNS

188 (c) That, on termination of this agreement, Dealer will immediately remove, at Dealer's
189 expense, all Ford signs from Dealer's place of business and discontinue all advertising of Company
190 products.

ASSIGNMENT OF UNFILLED ORDERS

191 (d) That, on termination of this agreement, Dealer will immediately turn over or assign
192 by appropriate documents to Company, or its nominee, all unfilled retail orders and deposits
193 made thereon and names and addresses of its service customers and prospective purchasers,
194 it being intended that this clause shall operate immediately upon termination of this agree-
195 ment as an assignment of Dealer's rights and interests in and to said orders and deposits.

REPURCHASE OF AUTOMOBILES

196 (e) That, in event of termination of this agreement by Company, Company shall re-
197 purchase immediately from Dealer, and Dealer shall sell to Company, all new unused passenger
198 automobiles, commercial automobiles and trucks of current model in Dealer's possession at
199 time of such termination which were purchased from Company after the thirtieth day prior to
200 giving notice of intention to terminate this agreement, as determined by date of Company's
201 invoice, at price paid Company by Dealer (unless there has been a price reduction and then at
202 current price to Dealer) less cost of transportation of the units from Dealer's place of business to
203 Company's branch under which Dealer operates, and provided such units are in first class sale-
204 able condition. In event of termination of this agreement by either Dealer or Company, Company
205 shall have the right and option at its election to repurchase any new and unused passenger auto-
206 mobiles, commercial automobiles or trucks in Dealer's possession at time of termination on like terms.

REPURCHASE OF PARTS AND ACCESSORIES

207 (f) That, in event of termination of this agreement by Company, Company shall re-
208 purchase immediately from Dealer and Dealer agrees to sell to Company all new and undamaged
209 genuine Ford, Mercury and Lincoln parts and approved accessories purchased from Company by
210 Dealer after the sixtieth day prior to date of giving notice of intention to terminate this agreement
211 at the prices paid for such parts by Dealer, less transportation charges thereon from Dealer's place
212 of business to Company's branch under which Dealer operates, provided such parts and
213 approved accessories are in first class saleable condition. Dealer also agrees to carefully pack
214 and box at Dealer's own expense and ship to Company all parts and approved accessories
215 which Company repurchases under the terms of this subparagraph (f). In case Dealer fails to
216 so box and ship such goods, Company may do so and deduct the expense thereof from the repur-
217 chase price. In event of termination of this agreement by either Dealer or Company, Company
218 may at its option examine the stock of Dealer and select any such genuine parts and approved
219 accessories that Dealer may have at the time of termination and Company shall have the right
220 and option to repurchase on like terms such genuine parts and approved accessories, whether
221 or not damaged as the Company in its absolute discretion may elect.

EVIDENCE OF TITLE

222 (g) That, in case of repurchase of Company products by Company as provided in sub-
223 paragraphs (e) and (f) above, Dealer shall furnish satisfactory evidence of clear title to such
224 property and shall execute and deliver proper instruments of title and in event such property
225 is subject to lien an arrangement shall be made whereby Company will procure such property
226 for such repurchase price with such lien discharged.

PRIVILEGE TO ENTER PREMISES

227 (h) That Dealer hereby expressly consents that Company may enter premises of Dealer
228 to take possession of all or any part of Company products mentioned in subparagraphs (e)
229 and (f) above upon agreeing to pay the repurchase price as provided above.

MISCELLANEOUS PROVISIONS

230 (11) It is expressly understood and agreed:

MICHIGAN AGREEMENT

231 (a) That this agreement has been first signed by Dealer and sent to Com-
232 pany's office at Dearborn, Michigan, for final approval and execution and has
233 subsequently been there signed and delivered on behalf of Company, and the
234 parties hereto intend it to be executed as a Michigan agreement and construed
235 in accordance with the laws of the State of Michigan.

COMPANY'S AGENTS

236 (b) That Dealer acknowledges notice that no one except the President,
237 Vice-President, Secretary, or Assistant Secretary of Company is authorized to
238 execute this agreement on behalf of Company or in any manner to enlarge, vary
239 or modify its terms or to terminate it, and they only by an instrument in writing.
240 This agreement shall not bind Company until it is signed by one of the officers
241 named above.

REPRESENTATIONS AND DATE EFFECTIVE

242 (c) That Dealer admits that no representations or statements have been
243 made to him in behalf of Company which would in any way tend to change or to

244 modify the terms or any of them of this agreement, or which would in any manner
245 prevent this agreement from going into full force and effect upon being executed
246 by Company.

TERMINATION OF PRIOR AGREEMENTS

247 (d) That this agreement terminates and supersedes all prior Ford Sales
248 Agreements, if any, between the parties hereto.

ASSIGNMENT

249 (e) That this agreement may not be assigned by Dealer without the written
250 assent of Company, executed by one of the officers authorized to execute this
251 agreement.

SEPARABILITY

252 (f) That, if any provision of this agreement is invalid or unenforceable or is
253 prohibited by the law of the state where it is to be performed, this agreement shall
254 be considered divisible as to such provision and such provision shall be inoperative
255 and shall not be part of the consideration moving from either party hereto to the
256 other and the remainder of this agreement shall be valid and binding and of like
257 effect as though such provision were not included herein.

LIMITATION OF COMPANY'S LIABILITY

258 (12) The requirements and limitations of this agreement as to the facilities to
259 be supplied by Dealer, as to the conduct of the business of dealing in Company
260 products and as to relationships between Dealer and others are intended only to
261 protect the good name and good will and business of Company, to assure Com-
262 pany that Company products will be made available to public and that service
263 facilities will be made available to ultimate users of its products, and to assure or
264 inform Company of the financial stability of Dealer. It is distinctly understood that
265 this agreement contemplates that Dealer will acquire Dealer's own plant and facilities
266 in accordance with Dealer's own discretion and will purchase Company products as
267 Dealer's own and resell them to customers selected by Dealer, all in conformity with
268 the requirements and limitations herein specified but otherwise in Dealer's own
269 discretion. Nothing herein contained shall impose any liability on Company for any
270 expenditures made or incurred by Dealer in preparation for performance or in per-
271 formance of this agreement.

272 IN WITNESS WHEREOF the parties have executed this agreement as of the
273 day and year first above written.

Ford Motor Company

(DEALER'S TRADE NAME)

By _____
ASSISTANT SECRETARY

By _____
(SIGNATURE AND TITLE)

MERCURY

SALES
AGREEMENT

BETWEEN

Ford Motor Company

AND

Form L 928
6-1-52

Ford Motor Company

_____ District

MERCURY SALES AGREEMENT

1 AGREEMENT made at Dearborn, State of Michigan, as of this _____
 2 day of _____ 19____, by and between Ford Motor Company,
 3 a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter
 4 called "Company"), and _____
 (State whether an individual,
 5 partnership, or corporation. If the latter, show name of state in which incorporated)
 6 with principal place of business at _____
 (Street address)
 7 _____, State of _____
 (Town) (County)
 8 (hereinafter called "Dealer").
 9 **In Consideration** of the promises herein made to each other by the parties hereto it is agreed
 10 as follows:

SELLING RIGHTS

11 (1) Company agrees to sell and Dealer agrees to purchase, for resale, Mercury automobiles,
 12 and parts and accessories therefor, and parts and accessories for Lincoln and Ford automobiles,
 13 (all of which for convenience are sometimes hereinafter collectively referred to as "Company
 14 Products"), upon the terms and conditions hereinafter specifically set forth and subject to the
 15 right reserved by Company to sell to other dealers and direct to retail purchasers in the United
 16 States without obligation of any kind to Dealer on any such sale. It is intended that this agree-
 17 ment shall govern all relationships between Company and Dealer unless some such relation-
 18 ships shall be governed by another agreement in writing duly executed by an officer of Company.

PRICES

19 (2) Company will sell its products to Dealer at such prices as are from time to time estab-
 20 lished by Company plus Company's charge for distribution and delivery and a sum equivalent
 21 to, or in reimbursement for, any taxes imposed by any law of the United States, any state, or
 22 municipality, or other taxing authority upon the manufacture, ownership, use, or sale of any of
 23 Company products sold under this agreement, if not included in the established price.

TERMS AND TITLE

24 (3) Payment by Dealer is to be in cash, except in cases where the invoice shows sale to be
 25 on credit. Title to all Company products, except in a case where the invoice shows sale to be
 26 on credit, shall be and remain with Company until actual receipt of the full purchase price in cash
 27 by Company. In case Dealer makes payment by check or by paying draft attached to bill of
 28 lading, Dealer shall pay the cost of exchange, if any. Receipt from Dealer or Dealer's bank of
 29 any check, draft or other commercial paper shall not constitute payment until Company has

30 received cash in the full amount thereof. Until Company has received cash in full payment of
31 any such check, draft or other commercial paper, its right to retake and resell Company products
32 for which such paper is issued shall continue.

CHANGE IN PRICES

33 (4) Prices of all Company products shall be subject to change from time to time; however,
34 Company agrees that, in the event of a price reduction on current models of its Mercury auto-
35 mobiles, it will reimburse Dealer to the extent of the difference between the price at which such
36 product was purchased and the reduced price to Dealer on any new, unused and unsold unit of
37 said products in Dealer's stock (or stocks of Associate Dealers operating under an agreement with
38 Dealer) purchased from Company during the period of sixty (60) days next preceding the change
39 in price, as determined by date of Company's invoice, provided that Dealer files written claim for
40 refund within ten (10) days after announcement by Company of such price reduction. Such
41 claim shall be supported by adequate proof and subject to Company audit. Dealer shall not be
42 entitled to any reimbursement under this paragraph (4) on account of any reduction in the
43 amount of the Company's charge for distribution and delivery, or on account of any reduction
44 in the amount of taxes.

OPERATION OF BUSINESS

45 (5) Dealer agrees to maintain a place of business and only one place of business, unless repair
46 shops or used automobile outlets are separate from salesroom, located in a place and equipped
47 in a manner acceptable to Company; to display conspicuously thereon approved Mercury signs;
48 to install and maintain therein the tools, machinery and equipment recommended by Company;
49 to employ sufficient, competent salesmen to solicit adequately all potential purchasers of Com-
50 pany products in the community in which Dealer is located, and sufficient, competent service
51 mechanics to render prompt, efficient service to owners of Company products and to render such
52 service to any owners of Company products engaging such service, including the service to which
53 a purchaser of such products from Dealer, or from another authorized Mercury Dealer, Mercury
54 Associate Dealer, Lincoln Dealer, or Ford Dealer is entitled; to install and maintain an accounting
55 system in accordance with Dealers Accounting Procedure Manual as approved by Company; to
56 furnish to Company at regular intervals as designated by Company accurate financial statements
57 reflecting the true financial condition of Dealer's business on standard forms provided by Com-
58 pany for that purpose; to allow representatives of Company, at all reasonable times and from
59 time to time, to examine all records, contracts and accounts covering sale or service of Company
60 products by Dealer and to examine Dealer's stock and place of business and to test Dealer's
61 equipment and facilities to the end that Company may be assured that Dealer is carrying out all
62 of the terms of this agreement and is properly equipped to render adequate service to owners or
63 operators of Company products; to submit promptly to Company, Dealer's Ten-Day Reports
64 accurately and fully prepared on forms provided by Company therefor and on the dates specified
65 therein.

TRADE-MARKS AND NAMES

66 (6) Dealer further agrees not to use the words "Ford," "Fordson," "Lincoln," "Zephyr,"
67 "Mercury," or any trade-mark or trade name adopted by Company, or coined words or combina-
68 tions containing the same, in connection with any business conducted by Dealer other than deal-
69 ing in Company products; if Company approves in writing, Dealer may use the word "Mercury"
70 in Dealer's firm name or trade name and Dealer agrees before so doing to submit such proposed
71 firm name or trade name in writing to the Company and secure prior written approval from the
72 Company for the use of such name; and Dealer further agrees that if the word "Mercury" is used
73 in Dealer's firm name or trade name, on termination of this Agreement or upon request of Com-
74 pany, Dealer will promptly and permanently discontinue the use of such firm name or trade name
75 and will cancel the registration of any such firm name or trade name whether same be in the form
76 of assumed name, partnership name, or other name and if same be a corporate name, Dealer will
77 promptly dissolve or change the name of such corporation and take such legal steps as may be
78 necessary, in the discretion of the Company, to discontinue the use or right to use any such

79 name; and Dealer further agrees not to contest the validity of any patent used or claimed by
80 Company, nor to contest the right of Company to exclusive use of any trade-mark or trade name
81 at any time adopted by Company.

DEALER NOT TO ACT AS AGENT

82 (7) Dealer further agrees not to make any representation or warranty concerning Company
83 products on behalf of Company, but to refer purchasers to "Ford Motor Company Warranty"
84 printed on back of Retail Buyer's Order form supplied by Company and not in any manner to
85 attempt to assume or create obligations on behalf of Company or in any manner attempt to act
86 as agent of Company.

DEALER'S STOCK

87 (8) Dealer further agrees:

88 (a) To maintain a stock of automobiles of current model equivalent to between eight and
89 twelve per cent (8% and 12%) of Dealer's retail and wholesale deliveries of such units during
90 preceding twelve (12) months, varying between those percentages in different months in accord-
91 ance with the estimated normal seasonal requirements of Dealer for the different months; to
92 maintain a stock of genuine Mercury parts and approved accessories of an assortment reasonably
93 comparable to the current demand, equivalent to at least one-sixth (1/6th) of the sales of parts
94 and accessories by Dealer during the previous twelve (12) months, based on cost to Dealer. In
95 case Dealer has not been operating under a Mercury Sales Agreement during the twelve (12)
96 months preceding the date of this agreement, Dealer agrees, until such time as Dealer has been
97 operating under a Mercury Sales Agreement for twelve (12) months, to maintain at all times a
98 stock of new Mercury automobiles equivalent to the estimated sales during the next thirty (30)
99 days and of parts and accessories equivalent to the estimated requirements for sale and service
100 during the next sixty (60) days. The requirement that Dealer maintain adequate stocks shall
101 be dependent on Company's ability to supply the same.

ORDERS

102 (b) To enable Company to schedule its production effectively, Dealer shall furnish Com-
103 pany, prior to the tenth (10th) day of each month, with an order for the estimated number of
104 automobiles which Dealer will need for sale and to maintain stocks during the succeeding month
105 in accordance with the provisions stated in subparagraph (a) of paragraph (8) above, and will on
106 dates designated by Company furnish Company with orders on forms provided by Company
107 therefor for Dealer's estimated requirements of parts and accessories for sale and to maintain
108 stocks in accordance with the provisions stated above. Company agrees to give careful consid-
109 eration to all orders received from Dealer but expressly reserves the right to follow or depart from
110 such orders, and Company shall in no way be liable for failure to ship, or for delay in shipments
111 however caused, or for shipping over routes other than specified by Dealer.

DEMONSTRATORS

112 (c) To have available at all times in good running order and presentable condition for dem-
113 onstration purposes, an adequate number of new Mercury automobiles of current model (but at
114 no time less than one).

TRADE PRACTICES

115 (9) Dealer further agrees:

116 (a) To avoid in every way such trade practices in connection with Dealer's competition
117 with other Mercury Dealers and Mercury Associate Dealers and in selling Company products to
118 the public as are injurious to Company's good name and good will or are detrimental to public
119 interest.

RETAIL PRICES

120 (b) Insofar as it is lawful for Dealer so to agree, not to resell Company products bearing
121 Company's trade-mark or trade name at less than retail prices established for Dealer's city or
122 town from time to time by Company, except in cases where such goods have been damaged, or
123 have become obsolete, or are about to become obsolete because of change in models, or in the case
124 of sales to Company or its nominees, or to other authorized Mercury Dealers, Mercury Associate
125 Dealers, Lincoln Dealers, Lincoln Associate Dealers or Ford Dealers, and except when a discount
126 is warranted by quantity purchases unless such a discount is in violation of law. Dealer agrees,
127 if requested by Company, to display prominently in Dealer's showroom a chart showing current
128 retail prices as established by Company for Dealer's city or town.

SERVICE COMMISSION

129 (c) That as convenient Authorized Mercury Service must be made available to users of
130 Mercury automobiles and as a means to that end, in case Dealer sells directly, or indirectly
131 through a Ford dealer, a new Mercury automobile to a buyer residing in another city or town
132 where an authorized Mercury Dealer or Mercury Associate Dealer is located, or to a buyer re-
133 siding in another incorporated municipality in which there is no such Mercury Dealer or Mercury
134 Associate Dealer, but which municipality is contiguous to a city or town in which an authorized
135 Mercury Dealer or Mercury Associate Dealer is located, Dealer shall pay a service commission of
136 Forty Dollars (\$40.00) to the dealer or Associate Dealer in the town where purchaser resides
137 within five (5) days after the unit is delivered to buyer with the understanding that such other
138 dealer agrees to render to such purchaser the service which a new car purchaser ordinarily receives
139 from the delivering dealer or associate dealer. Upon receipt of service commission by Mercury
140 Dealer from another Dealer or Mercury Associate Dealer, Dealer shall render to purchaser the
141 service which a new car purchaser ordinarily receives from the delivering dealer or associate
142 dealer. In case purchaser is a resident of a multiple dealer metropolitan area, as defined below,
143 and Dealer's place of business is not in that area, Dealer shall pay such service commission to the
144 authorized Mercury Dealer or Mercury Associate Dealer located nearest to place of residence
145 of purchaser. The requirement of this sub-paragraph (c) that Dealer pay a service commission
146 shall not apply, if Dealer is located in a multiple dealer metropolitan area (meaning thereby a city
147 and such surrounding territory as Company in its absolute discretion may from time to time in-
148 clude within the metropolitan area of that city) and sells to a purchaser residing anywhere with-
149 in such metropolitan area, to sales to owners of fleets of five (5) or more automobiles and/or
150 trucks, or to sales to purchasers temporarily residing for more than thirty (30) days at the place
151 where Dealer is located. Company will act as umpire between dealers in connection with these
152 service commissions, but does not guarantee payment of any such service commissions.

GENUINE PARTS

153 (d) That in view of the fact Company has in its advertising consistently urged the ultimate
154 users of Mercury, Lincoln and Ford automobiles or trucks to patronize its authorized dealers as
155 being proper sources from which to procure genuine Mercury, Lincoln, and Ford parts, Dealer
156 will not, in any place of business upon which Dealer displays Company's trade-marks or trade
157 names, or any sign or indication that such place of business is that of an authorized Mercury
158 Dealer, or an authorized Mercury Service Station, sell, offer for sale, or use in the repair of such
159 automobiles and trucks as genuine new Mercury, Lincoln or Ford parts, any parts which are not
160 in fact genuine new Mercury, Lincoln or Ford parts manufactured by or for Company.

ADVERTISING

161 (e) Not to publish or to use advertising matter or to use sales policies in any manner in
162 connection with Dealer's business as a Mercury Dealer which are detrimental to the Company,
163 to other Mercury Dealers, or Mercury Associate Dealers, or to the public, or to which Company
164 may object as being detrimental to its good name or good will.

CUSTOMER'S DEPOSITS

165 (f) To accept down payments of cash or used automobiles in anticipation of future deliv-
166 eries of automobiles only in trust, and to keep all such cash in a separate earmarked fund not
167 commingled with Dealer's own funds, and to hold title to such used automobile only in trust until
168 the transaction for the new automobile is consummated and not to place any lien thereon, or sell
169 the same without at the time placing the amount of the trade-in allowance of such used automo-
170 bile in such earmarked trust fund in lieu of said used automobile in trust. Inasmuch as failure to
171 apply monies and properties paid or transferred to an authorized Mercury Dealer in anticipation
172 of future deliveries to the purpose for which payment or transfer is made is likely to injure the
173 good name and good will of Company, Dealer agrees to enter into an agreement with such pros-
174 pective customers at the time such payment or transfer of title of property is made binding Dealer
175 to hold such monies or property in trust as provided above.

TERMINATION

176 (10) This agreement may be terminated at any time at the will of either party by written
177 notice to the other party given either by registered mail or by personal delivery and such termina-
178 tion shall operate to cancel all orders for Company products theretofore received by Company
179 and not delivered. It is, however, agreed in connection with such right of termination:

NOTICE OF INTENTION

180 (a) That in case of termination by Company, notice of intention to so terminate shall be
181 given to Dealer sixty (60) days prior to actual termination date by either of the methods of term-
182 ination mentioned above, except that no prior notice need be given in case of death, insolvency or
183 bankruptcy of Dealer, or of appointment by a court of a receiver, trustee or custodian for Dealer
184 or Dealer's business, or in event of Dealer's failure to keep his place of business open during the
185 hours customary in the trade, or of an assignment by Dealer for benefit of creditors, or of an as-
186 signment or attempted assignment of interest by Dealer, or in event Dealer is a partnership, of
187 disagreement between partners, or in event Dealer is a corporation, of litigation or proceedings
188 preventing corporation from electing in due course its Board of Directors, appointing its officers,
189 or preventing its Board of Directors or officers from acting or otherwise functioning in an ordi-
190 nary course of business.

SUMS OWING COMPANY

191 (b) That, on termination of this agreement, Dealer will immediately pay to Company all
192 sums owing Company at the time of such termination.

REMOVAL OF SIGNS

193 (c) That, on termination of this agreement, Dealer will immediately remove, at Dealer's
194 expense, all Mercury signs from Dealer's place of business and discontinue all advertising of
195 Company products.

ASSIGNMENT OF UNFILLED ORDERS

196 (d) That, on termination of this agreement, Dealer will immediately turn over or assign
197 by appropriate documents to Company, or its nominee, all unfilled retail orders and deposits
198 made thereon and names and addresses of its service customers and prospective purchasers, it
199 being intended that this clause shall operate immediately upon termination of this agreement as
200 an assignment of Dealer's rights and interests in and to said orders and deposits.

REPURCHASE OF AUTOMOBILES

201 (e) That, in event of termination of this agreement by Company, Company shall repur-
202 chase immediately from Dealer, and Dealer shall sell to Company, all new, unused automobiles
203 of current model in Dealer's possession at time of such termination which were purchased from

204 Company after the thirtieth (30th) day prior to giving notice of intention to terminate this agree-
205 ment, as determined by date of Company's invoice, at price paid Company by Dealer (unless
206 there has been a price reduction and then at current price to Dealer) less cost of transportation
207 of the units from Dealer's place of business to Company's branch under which Dealer operates,
208 and provided such units are in first class saleable condition. In event of termination of this
209 agreement by either Dealer or Company, Company shall have the right and option at its election
210 to repurchase any new and unused automobiles in Dealer's possession at time of termination
211 on like terms.

REPURCHASE OF PARTS AND ACCESSORIES

212 (f) That, in event of termination of this agreement by Company, Company shall repur-
213 chase immediately from Dealer and Dealer agrees to sell to Company all new and undamaged
214 genuine Mercury, Ford and Lincoln parts and approved accessories purchased from Company by
215 Dealer after the sixtieth (60th) day prior to date of giving notice of intention to terminate this
216 agreement at the prices paid for such parts by Dealer less transportation charges thereon from
217 Dealer's place of business to Company's branch under which Dealer operates, provided such
218 parts and accessories are in first class saleable condition. Dealer also agrees to carefully pack
219 and box at Dealer's own expense and ship to Company all parts and accessories which Company
220 repurchases under the terms of this subparagraph (f). In case Dealer fails to so box and ship
221 such goods, Company may do so and deduct the expenses thereof from the repurchase price.
222 In event of termination of this agreement by either Dealer or Company, Company may at its
223 option examine the stock of Dealer and select any such genuine parts and approved accessories
224 that Dealer may have at the time of termination and Company shall have the right and option to
225 repurchase on like terms such genuine parts and approved accessories, whether or not damaged,
226 as the Company in its absolute discretion may elect.

EVIDENCE OF TITLE

227 (g) That, in case of repurchase of Company products by Company as provided in subpara-
228 graphs (e) and (f) above, Dealer shall furnish satisfactory evidence of clear title to such property
229 and shall execute and deliver proper instruments of title and in event such property is subject
230 to lien an arrangement shall be made whereby Company will procure such property for such
231 repurchase price with such lien discharged.

PRIVILEGE TO ENTER PREMISES

232 (h) That Dealer hereby expressly consents that Company may enter premises of Dealer
233 to take possession of all or any part of Company products mentioned in subparagraphs (e) and
234 (f) above upon agreeing to pay the repurchase price as provided above.

MISCELLANEOUS PROVISIONS

235 (11) It is expressly understood and agreed:

MICHIGAN AGREEMENT

236 (a) That this agreement has been first signed by Dealer and sent to Company's office at
237 Dearborn, Michigan, for final approval and execution and has subsequently been there signed
238 and delivered on behalf of Company, and the parties hereto intend it to be executed as a Michi-
239 gan agreement and construed in accordance with the laws of the State of Michigan.

COMPANY'S AGENTS

240 (b) That Dealer acknowledges notice that no one except the President, Vice-President, Sec-
241 retary, or Assistant Secretary of Company is authorized to execute this agreement on behalf of
242 Company or in any manner to enlarge, vary or modify its terms or to terminate it, and they only
243 by an instrument in writing. This agreement shall not bind Company until it is signed by one of
244 the officers named above.

REPRESENTATIONS AND DATE EFFECTIVE

245 (c) That Dealer admits that no representations or statements have been made to him in
246 behalf of Company which would in any way tend to change or to modify the terms or any of
247 them of this agreement, or which would in any manner prevent this agreement from going into
248 full force and effect upon being executed by Company.

TERMINATION OF PRIOR AGREEMENTS

249 (d) That this agreement terminates and supersedes all prior Mercury Sales Agreements, if
250 any, between the parties hereto.

ASSIGNMENT

251 (e) That this agreement may not be assigned by Dealer without the written assent of Com-
252 pany, executed by one of the officers authorized to execute this agreement.

SEPARABILITY

253 (f) That, if any provision of this agreement is invalid or unenforceable or is prohibited by
254 the law of the state where it is to be performed, this agreement shall be considered divisible as
255 to such provision and such provision shall be inoperative and shall not be part of the considera-
256 tion moving from either party hereto to the other and the remainder of this agreement shall be
257 valid and binding and of like effect as though such provision were not included herein.

LIMITATION OF COMPANY'S LIABILITY

258 (12) The requirements and limitations of this agreement as to the facilities to be supplied
259 by Dealer, as to the conduct of the business of dealing in Company products and as to relation-
260 ships between Dealer and others are intended only to protect the good name and good will and
261 business of Company, to assure Company that Company products will be made available to pub-
262 lic and that service facilities will be made available to ultimate users of its products, and to as-
263 sure or inform Company of the financial stability of Dealer. It is distinctly understood that this
264 agreement contemplates that Dealer will acquire Dealer's own plant and facilities in accordance
265 with Dealer's own discretion and will purchase Company products as Dealer's own and resell
266 them to customers selected by Dealer, all in conformity with the requirements and limitations
267 herein specified but otherwise in Dealer's own discretion. Nothing herein contained shall impose
268 any liability on Company for any expenditures made or incurred by Dealer in preparation for
269 performance or in performance of this agreement.

270 IN WITNESS WHEREOF the parties have executed this agreement as of the day and year
271 first above written.

Ford Motor Company

(DEALER'S TRADE NAME)

By _____
(ASSISTANT SECRETARY)

By _____
(SIGNATURE AND TITLE)



**S A L E S
A G R E E M E N T**

BETWEEN

Ford Motor Company

AND

FORM FD-928
REV. 5-54*Ford Motor Company*

____ District

FORD SALES AGREEMENT

1 **AGREEMENT** made at Dearborn, State of Michigan, as of this _____
 2 day of _____, 19____, by and between Ford Motor Company,
 3 a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter
 4 called "Company"), and _____
 (State whether an individual,
 5 partnership, or corporation. If the latter, show name of state in which incorporated.)
 6 with principal place of business at _____
 (Street Address)
 7 _____, State of _____
 (City and Postal Zone) (County)
 8 (hereinafter called "Dealer").

9 **In Consideration** of the promises herein made to each other by the parties hereto it is
 10 agreed as follows:

SELLING RIGHTS

11 (1) Company agrees to sell and Dealer agrees to purchase, for resale, Ford pas-
 12 senger automobiles, commercial automobiles, trucks, and parts and accessories therefor,
 13 and parts and accessories for Mercury and Lincoln automobiles (all of which for con-
 14 venience are sometimes hereinafter collectively referred to as "Company Products"),
 15 upon the terms and conditions hereinafter specifically set forth and subject to the right
 16 reserved by Company to sell to other dealers and direct to retail purchasers in the United
 17 States without obligation of any kind to Dealer on any such sale. It is intended that this
 18 agreement shall govern all relationships between Company and Dealer unless some such
 19 relationships shall be governed by another agreement in writing duly executed by an
 20 officer of Company.

PRICES

21 (2) Company will sell its products to Dealer at such prices as are from time to time estab-
 22 lished by Company plus Company's charge for distribution and delivery and a sum equivalent
 23 to, or in reimbursement for, any taxes imposed by any law of the United States, any state,
 24 or municipality, or other taxing authority upon the manufacture, ownership, use, or sale of
 25 any of Company products sold under this agreement, if not included in the established price.

TERMS AND TITLE

26 (3) Payment by Dealer is to be in cash, except in cases where the invoice shows sale to
 27 be on credit. Title to all Company products, except in a case where the invoice shows sale to
 28 be on credit, shall be and remain with Company until actual receipt of the full purchase price
 29 in cash by Company. In case Dealer makes payment by check or by paying draft attached
 30 to bill of lading, Dealer shall pay the cost of exchange, if any. Receipt from Dealer or Dealer's
 31 bank of any check, draft or other commercial paper shall not constitute payment until Com-
 32 pany has received cash in the full amount thereof. Until Company has received cash in full

33 payment of any such check, draft or other commercial paper, its right to retake and resell
34 Company products for which such paper is issued shall continue.

CHANGE IN PRICES

35 (4) Prices of all Company products shall be subject to change from time to time with-
36 out notice; provided, however, that in the event of a price reduction on any current model
37 Ford passenger automobile, truck or chassis, Company will refund to Dealer on each new,
38 unused and unsold unit of such model purchased from Company by Dealer during the twelve
39 (12) months next preceding, and in Dealer's stock on, the date of the reduction, an amount
40 equivalent to the difference between the price at which such unit was purchased from Com-
41 pany (less any prior refunds made hereunder by Company on such unit or refunds which
42 Dealer could have applied for but did not apply for on such unit) and the new reduced price
43 to Dealer; and provided further, that Dealer shall submit written claims for refunds here-
44 under within thirty (30) days after Company's announcement of such price reduction. Such
45 claims shall be supported by proof satisfactory to Company and be subject to Company
46 audit. Dealer shall not be entitled to any refund under this paragraph with respect to Ford
47 passenger automobiles, trucks or chassis used by Dealer as demonstrators, or on account of
48 any reduction in the amount of Company's charge for distribution and delivery or taxes,
49 or on account of any reduction in the price of an accessory or item of optional equipment.

OPERATION OF BUSINESS

50 (5) Dealer agrees to maintain a place of business and only one place of business, unless
51 repair shops or used automobile outlets and/or neighborhood service stations are separate
52 from salesroom, located in a place and equipped in a manner acceptable to Company; to dis-
53 play conspicuously thereon approved Ford signs; to install and maintain therein the tools,
54 machinery and equipment recommended by Company; to employ sufficient, competent sales-
55 men to solicit adequately all potential purchasers of Company products in the community in
56 which Dealer is located, and sufficient, competent service mechanics to render prompt, effi-
57 cient service to owners of Company products and to render such service to any owners of
58 Company products engaging such service, including the service to which a purchaser of
59 such products from Dealer, or from another Authorized Ford Dealer, is entitled; to install
60 and maintain an accounting system in accordance with Ford Dealers Accounting Procedure
61 Manual as approved by Company; to furnish Company at regular intervals as designated by
62 Company accurate financial statements reflecting the true financial condition of Dealer's
63 business on standard forms provided by Company for that purpose; to allow representatives
64 of Company, at all reasonable times and from time to time, to examine all records, contracts
65 and accounts covering sale or service of Company products by Dealer and to examine Deal-
66 er's stock and place of business and to test Dealer's equipment and facilities to the end that
67 Company may be assured that Dealer is carrying out all of the terms of this agreement and
68 is properly equipped to render adequate service to owners or operators of Company products;
69 to submit promptly to Company, Dealer's Ten-Day Reports accurately and fully prepared on
70 forms provided by Company therefor and on the dates specified therein.

TRADE-MARKS AND NAMES

71 (6) Dealer further agrees not to use the words "Ford," "Fordson," "Lincoln,"
72 "Zephyr," "Mercury," or any trade-mark or trade name adopted by Company, or coined words
73 or combinations containing the same, in connection with any business conducted by Dealer
74 other than dealing in Company products, and under no circumstances as a part of Dealer's
75 firm name or trade name; not to contest the validity of any patent used or claimed by Com-
76 pany, nor to contest the right of Company to exclusive use of any trade-mark or trade name
77 at any time adopted by Company.

DEALER NOT TO ACT AS AGENT

78 (7) Dealer further agrees not to make any representation or warranty concerning
79 Company products on behalf of Company, but to refer purchasers to "Manufacturer's War-
80 ranty" printed on back of Retail Buyer's Order form supplied by Company and not in any
81 manner to attempt to assume or create obligations on behalf of Company or in any manner
82 attempt to act as agent of Company.

DEALER'S STOCK

83 (8) Dealer further agrees:
84 (a) To maintain a stock of passenger automobiles, commercial automobiles and trucks
85 of current model equivalent to between eight and twelve per cent (8% and 12%) of Dealer's
86 retail deliveries of such units during preceding twelve (12) months, varying between those
87 percentages in different months in accordance with the estimated normal seasonal require-
88 ments of Dealer for the different months; to maintain a stock of genuine Ford parts and
89 approved accessories of an assortment reasonably comparable to the current demand, equi-
90 valent to at least one-sixth ($\frac{1}{6}$ th) of the sales of parts and accessories by Dealer during the
91 previous twelve (12) months, based on cost to the Dealer. In case Dealer has not been
92 operating under a Ford Sales Agreement during the twelve (12) months preceding the date
93 of this agreement, Dealer agrees, until such time as Dealer has been operating under a Ford
94 Sales Agreement for twelve (12) months, to maintain at all times a stock of new Ford pas-
95 senger automobiles, commercial automobiles and trucks equivalent to the estimated sales
96 during the next thirty (30) days and of parts and accessories equivalent to the estimated
97 requirements for sale and service during the next sixty (60) days. The requirement that
98 Dealer maintain adequate stocks shall be dependent on Company's ability to supply the same.

ORDERS

99 (b) To enable Company to schedule its production effectively, Dealer shall furnish
100 Company, prior to the tenth (10th) day of each month, with an order for the estimated
101 number of passenger automobiles, commercial automobiles and trucks which Dealer will need
102 for sale and to maintain stocks during the succeeding month in accordance with the pro-
103 visions stated in subparagraph (a) of paragraph (8) above, and will on dates designated by
104 Company furnish Company with orders on forms provided by Company therefor for Dealer's
105 estimated requirements of parts and accessories for sale and to maintain stocks in accord-
106 ance with the provisions stated above. Company agrees to give careful consideration to all
107 orders received from Dealer but expressly reserves the right to follow or depart from such
108 orders, and Company shall in no way be liable for failure to ship, or for delay in shipments
109 however caused, or for shipping over routes other than specified by Dealer.

DEMONSTRATORS

110 (c) To have available at all times in good running order and presentable condition for
111 demonstration purposes, an adequate number of Ford units of current model (but at no time
112 less than one passenger automobile and one commercial automobile or truck).

TRADE PRACTICES

113 (9) Dealer further agrees:
114 (a) To conduct Dealer's business so as to reflect favorably on Company's good name
115 and good will and to avoid in every way such practices as might be injurious to Company's
116 good name and good will.

GENUINE PARTS

117 (b) That in view of the fact Company has in its advertising consistently urged the
118 ultimate users of Ford, Mercury and Lincoln automobiles or trucks to patronize its author-

119 ized dealers as being proper sources from which to procure genuine Ford, Mercury and Lin-
120 coln parts, Dealer will not, in any place of business upon which Dealer displays Company's
121 trade-marks or trade names, or any sign or indication that such place of business is that of
122 an authorized Ford Dealer, or an authorized Ford Service Station, sell, offer for sale, or use
123 in the repair of such automobiles and trucks as genuine new Ford, Mercury or Lincoln parts,
124 any parts which are not in fact genuine new Ford, Mercury or Lincoln parts manufactured
125 by or for Company.

ADVERTISING

126 (c) Not to publish or to use advertising matter or to use sales policies in any manner
127 in connection with Dealer's business as a Ford Dealer which are detrimental to the Com-
128 pany, to other Ford Dealers, or to the public, or to which Company may object as being
129 detrimental to its good name or good will.

CUSTOMERS' DEPOSITS

130 (d) To accept down payments of cash or used automobiles in anticipation of future
131 deliveries of passenger automobiles, commercial automobiles, or trucks only in trust, and
132 to keep all such cash in a separate earmarked fund not commingled with Dealer's own funds,
133 and to hold title to such used automobile only in trust until the transaction for the new
134 passenger automobile, commercial automobile, or truck is consummated and not to place any
135 lien thereon, or to sell the same without at the time placing the amount of the trade-in
136 allowance of such used automobile in such earmarked trust fund in lieu of said used auto-
137 mobile in trust. Inasmuch as failure to apply monies and properties paid or transferred to an
138 authorized Ford Dealer in anticipation of future deliveries to the purpose for which the pay-
139 ment or transfer is made is likely to injure the good name and good will of Company, Dealer
140 agrees to enter into an agreement with such prospective customers at the time such payment
141 or transfer of title of property is made binding Dealer to hold such monies or property in
142 trust as provided above.

TERMINATION

143 (10) This agreement may be terminated at any time at the will of either party by
144 written notice to the other party given either by registered mail or by personal delivery
145 and such termination shall operate to cancel all orders for Company products theretofore
146 received by Company and not delivered. It is, however, agreed in connection with such right
147 of termination:

NOTICE OF INTENTION

148 (a) That in case of termination by Company, notice of intention to so terminate shall
149 be given to Dealer sixty (60) days prior to actual termination date by either of the methods
150 of termination mentioned above, except that no prior notice need be given in case of death,
151 insolvency or bankruptcy of Dealer, or of appointment by a court of a receiver, trustee or
152 custodian for Dealer or Dealer's business, or in event of Dealer's failure to keep his place
153 of business open during the hours customary in the trade, or of an assignment by Dealer
154 for benefit of creditors, or of an assignment or attempted assignment of interest by Dealer,
155 or in event Dealer is a partnership, of disagreement between partners, or in event Dealer
156 is a corporation, of litigation or proceedings preventing corporation from electing in due
157 course its Board of Directors, appointing its officers, or preventing its Board of Directors or
158 officers from acting or otherwise functioning in an ordinary course of business.

SUMS OWING COMPANY

159 (b) That, on termination of this agreement, Dealer will immediately pay to Company
160 all sums owing Company at the time of such termination.

REMOVAL OF SIGNS

161 (c) That, on termination of this agreement, Dealer will immediately remove, at Deal-
162 er's expense, all Ford signs from Dealer's place of business and discontinue all advertising
163 of Company products.

ASSIGNMENT OF UNFULFILLED ORDERS

164 (d) That, on termination of this agreement, Dealer will immediately turn over or assign
165 by appropriate documents to Company, or its nominee, all unfilled retail orders and deposits
166 made thereon and names and addresses of its service customers and prospective purchasers,
167 it being intended that this clause shall operate immediately upon termination of this agree-
168 ment as an assignment of Dealer's rights and interests in and to said orders and deposits.

REPURCHASE OF AUTOMOBILES

169 (e) That, in event of termination of this agreement by Company, Company shall re-
170 purchase immediately from Dealer, and Dealer shall sell to Company, all new unused pas-
171 senger automobiles, commercial automobiles and trucks of current model in Dealer's posses-
172 sion at time of such termination which were purchased from Company after the thirtieth
173 day prior to giving notice of intention to terminate this agreement, as determined by date of
174 Company's invoice, at price paid Company by Dealer (unless there has been a price reduc-
175 tion and then at current price to Dealer) less cost of transportation of the units from Deal-
176 er's place of business to Company's branch under which Dealer operates, and provided such
177 units are in first class saleable condition. In event of termination of this agreement by either
178 Dealer or Company, Company shall have the right and option at its election to repurchase
179 any new and unused passenger automobiles, commercial automobiles or trucks in Dealer's
180 possession at time of termination on like terms.

REPURCHASE OF PARTS AND ACCESSORIES

181 (f) That, in event of termination of this agreement by Company, Company shall re-
182 purchase immediately from Dealer and Dealer agrees to sell to Company all new and un-
183 damaged genuine Ford, Mercury and Lincoln parts and approved accessories purchased from
184 Company by Dealer after the sixtieth day prior to date of giving notice of intention to termi-
185 nate this agreement at the prices paid for such parts by Dealer, less transportation charges
186 thereon from Dealer's place of business to Company's branch under which Dealer operates,
187 provided such parts and approved accessories are in first class saleable condition. Dealer
188 also agrees to carefully pack and box at Dealer's own expense and ship to Company all parts
189 and approved accessories which Company repurchases under the terms of this subparagraph
190 (f). In case Dealer fails to so box and ship such goods, Company may do so and deduct the
191 expense thereof from the repurchase price. In event of termination of this agreement by
192 either Dealer or Company, Company may at its option examine the stock of Dealer and select
193 any such genuine parts and approved accessories that Dealer may have at the time of termi-
194 nation and Company shall have the right and option to repurchase on like terms such genu-
195 ine parts and approved accessories, whether or not damaged as the Company in its absolute
196 discretion may elect.

EVIDENCE OF TITLE

197 (g) That, in case of repurchase of Company products by Company as provided in sub-
198 paragraphs (e) and (f) above, Dealer shall furnish satisfactory evidence of clear title to such
199 property and shall execute and deliver proper instruments of title and in event such property
200 is subject to lien an arrangement shall be made whereby Company will procure such property
201 for such repurchase price with such lien discharged.

PRIVILEGE TO ENTER PREMISES

202 (h) That Dealer hereby expressly consents that Company may enter premises of Dealer
203 to take possession of all or any part of Company products mentioned in subparagraphs (e)
204 and (f) above upon agreeing to pay the repurchase price as provided above.

MISCELLANEOUS PROVISIONS

205 (11) It is expressly understood and agreed:

MICHIGAN AGREEMENT

206 (a) That this agreement has been first signed by Dealer and sent to Com-
207 pany's office at Dearborn, Michigan, for final approval and execution and has
208 subsequently been there signed and delivered on behalf of Company, and the
209 parties hereto intend it to be executed as a Michigan agreement and construed
210 in accordance with the laws of the State of Michigan.

COMPANY'S AGENTS

211 (b) That Dealer acknowledges notice that no one except the President,
212 Vice-President, Secretary, or Assistant Secretary of Company is authorized to
213 execute this agreement on behalf of Company or in any manner to enlarge, vary
214 or modify its terms or to terminate it, and they only by an instrument in writing.
215 This agreement shall not bind Company until it is signed by one of the officers
216 named above.

REPRESENTATIONS AND DATE EFFECTIVE

217 (c) That Dealer admits that no representations or statements have been
218 made to him in behalf of Company which would in any way tend to change or to
219 modify the terms or any of them of this agreement, or which would in any manner
220 prevent this agreement from going into full force and effect upon being executed
221 by Company.

TERMINATION OF PRIOR AGREEMENTS

222 (d) That this agreement terminates and supersedes all prior Ford Sales
223 Agreements, if any, between the parties hereto.

ASSIGNMENT

224 (e) That this agreement may not be assigned by Dealer without the written
225 assent of Company, executed by one of the officers authorized to execute this
226 agreement.

SEPARABILITY

227 (f) That, if any provision of this agreement is invalid or unenforceable or is
228 prohibited by the law of the state where it is to be performed, this agreement shall
229 be considered divisible as to such provision and such provision shall be inoperative
230 and shall not be part of the consideration moving from either party hereto to the
231 other and the remainder of this agreement shall be valid and binding and of like
232 effect as though such provision were not included herein.

LIMITATION OF COMPANY'S LIABILITY

233 (12) The requirements and limitations of this agreement as to the facilities
234 to be supplied by Dealer, as to the conduct of the business of dealing in Com-

235 many products and as to relationships between Dealer and others are intended
236 only to protect the good name and good will and business of Company, to assure
237 Company that Company products will be made available to public and that service
238 facilities will be made available to ultimate users of its products, and to assure
239 or inform Company of the financial stability of Dealer. It is distinctly understood
240 that this agreement contemplates that Dealer will acquire Dealer's own plant and
241 facilities in accordance with Dealer's own discretion and will purchase Company
242 products as Dealer's own and resell them to customers selected by Dealer, all
243 in conformity with the requirements and limitations herein specified but other-
244 wise in Dealer's own discretion. Nothing herein contained shall impose any liabil-
245 ity on Company for any expenditures made or incurred by Dealer in preparation
246 for performance or in performance of this agreement.

— 247 IN WITNESS WHEREOF the parties have executed this agreement as of the
248 day and year first above written.

— *Ford Motor Company*

(DEALER'S TRADE NAME)

— By _____
ASSISTANT SECRETARY

By _____
(SIGNATURE AND TITLE)

SALES AGREEMENT

FORD Division

FORD MOTOR COMPANY

FD-365-J
MAR '55

FORD MOTOR COMPANY

.....District

AMENDMENT TO FORD SALES AGREEMENT

SUPPLEMENTAL AGREEMENT, made at Dearborn, Michigan as of this ____ day of _____, 19____.

by and between _____

STATE WHETHER AN INDIVIDUAL, PARTNERSHIP, OR CORPORATION.

_____ with a principal place of
IF THE LATTER, SHOW NAME OF STATE IN WHICH INCORPORATED.)

business at _____ (hereinafter called
(STREET ADDRESS) (CITY AND POSTAL ZONE)

"Dealer"), and Ford Motor Company, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereafter called "Company").

The parties hereto have previously entered into a Ford Sales Agreement dated _____ and now desire to make certain changes therein.

NOW, THEREFORE, in consideration of these premises, the parties hereto mutually agree that said Ford Sales Agreement be amended by changing Paragraph D to read as follows:

"D. This agreement has been entered into by Company with Dealer in reliance upon, and in recognition of, the fact that the following person(s) substantially participate(s) in the ownership of Dealer:

NAME

PERCENTAGE
OF INTEREST

NAME	PERCENTAGE OF INTEREST
------	---------------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and with respect to the name(s) of the person(s) having full managerial authority and responsibility for the operating management of Dealer in the performance of said Agreement to read as follows:

NAME	TITLE
------	-------

_____	_____
_____	_____

Assignee agrees to assume, perform and carry out all the conditions and obligations contained in said Sales Agreement to be performed by Dealer, and specifically acknowledges and agrees that all of the provisions of said Sales Agreement, except as modified by this assignment including the foregoing amendment of name(s) in Paragraph D as accepted by FORD MOTOR COMPANY and then to the extent so modified and accepted, also apply to this assignment and acceptance and hereby authorizes FORD MOTOR COMPANY to deliver Assignee's copy of said assignment upon being consented to by FORD MOTOR COMPANY at Dearborn, Michigan, to Assignee by placing same addressed to Assignee at the address hereinabove stated in the United States Post Office in Michigan.

.....
ASSIGNEE

By.....
SIGNATURE AND TITLE

By.....
SIGNATURE AND TITLE

COMPANY CONSENT

In accordance with the provisions of said Sales Agreement, FORD MOTOR COMPANY hereby consents to the above assignment, including the amendment of name(s) in Paragraph D, as provided in the above acceptance by Assignee.

Executed and dated at Dearborn, Michigan, this _____ day of _____, 19____.

FORD MOTOR COMPANY

By.....
ASSISTANT SECRETARY

FD-285-K
MAR '35

FORD MOTOR COMPANY

.....District

ASSIGNMENT OF SALES AGREEMENT

For and in consideration of the sum of one Dollar and other valuable considerations, receipt of which is hereby acknowledged, _____ of _____ as Assignor,
(NAME) (TOWN OR CITY) (STATE)
do _____ by these presents transfer, assign and set over unto _____
(NAME)
a _____, as Assignee, all of Assignor's interest in a
(STATE WHETHER INDIVIDUAL, PARTNERSHIP OR CORPORATION)
certain Ford Sales Agreement between FORD MOTOR COMPANY and Assignor, as Dealer, dated as of the _____ day of _____, 19____, together with all agreements supplementary thereto and amendatory thereof including particularly the following:

Dated this _____ day of _____, 19____.

.....
ASSIGNOR

By.....
SIGNATURE AND TITLE

By.....
SIGNATURE AND TITLE

By.....
SIGNATURE AND TITLE

ACCEPTANCE

The above named Assignee does hereby accept the above assignment and in consideration thereof and of the consent of FORD MOTOR COMPANY thereto and to an amendment of the provisions of Paragraph D thereof with respect to the name(s) of the person(s) substantially participating in the ownership of Dealer to read as follows:

NAME	PERCENTAGE OF INTEREST
------	---------------------------

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and with respect to the name(s) of the person(s) having full managerial authority and responsibility for the operating management of Dealer in the performance of said Agreement to read as follows:

NAME	TITLE
------	-------

_____	_____
_____	_____

Assignee agrees to assume, perform and carry out all the conditions and obligations contained in said Sales Agreement to be performed by Dealer, and specifically acknowledges and agrees that all of the provisions of said Sales Agreement, except as modified by this assignment including the foregoing amendment of name(s) in Paragraph D as accepted by FORD MOTOR COMPANY and then to the extent so modified and accepted, also apply to this assignment and acceptance and hereby authorizes FORD MOTOR COMPANY to deliver Assignee's copy of said assignment upon being consented to by FORD MOTOR COMPANY at Dearborn, Michigan, to Assignee by placing same addressed to Assignee at the address hereinabove stated in the United States Post Office in Michigan.

.....
ASSIGNEE

By.....
SIGNATURE AND TITLE

By.....
SIGNATURE AND TITLE

COMPANY CONSENT

In accordance with the provisions of said Sales Agreement, FORD MOTOR COMPANY hereby consents to the above assignment, including the amendment of name(s) in Paragraph D, as provided in the above acceptance by Assignee.

Executed and dated at Dearborn, Michigan, this _____ day of _____, 19____.

FORD MOTOR COMPANY

By.....
ASSISTANT SECRETARY

FD-201
OCT-16

FORD MOTOR COMPANY

.....District

FORD SALES AGREEMENT

AGREEMENT made at Dearborn, Michigan, as of the.....day of....., 19.....,

by and between.....

(STATE WHETHER AN INDIVIDUAL, PARTNERSHIP, OR CORPORATION.)

IF THE LATTER, SHOW NAME OF STATE IN WHICH INCORPORATED.)

.....with a principal place of

business at.....

(STREET ADDRESS)

(CITY AND POSTAL ZONE)

(COUNTY)

(STATE)

(hereinafter called

"Dealer"), and Ford Motor Company, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter called "Company").

PREAMBLE

Company has created a line of quality motor vehicles bearing the trade-mark "Ford" and parts, accessories and equipment therefor. These products are distributed and serviced primarily by authorized dealers. There has been established and maintained over a period of many years the good will of the public toward Company, its products and its dealers. The success of Company and the success of its dealers are dependent upon the continuation of this good will. In order to maintain and further this good will, it is essential that all dealers give prompt, satisfactory and courteous service to their customers, treat their customers fairly, and handle complaints properly.

Company has built and acquired, and is continuing to build and acquire, extensive plants, facilities and tooling necessary to the production and distribution of its products on a competitive basis, and has made, and is continuing to make, large investments in engineering and research for the improvement of its products. In order for Company and its dealers to obtain maximum benefits from such plants, facilities, tooling, engineering and research, it is essential that each dealer in the products of Company possess the qualifications, personnel and facilities requisite to cultivating and developing the market to its full potential in his locality, assume and carry out the obligation and responsibility for thus cultivating and developing the market, and adopt sound management practices in the conduct of his business.

In order to assist its dealers to achieve maximum results, Company has made available, and will continue to make available, to its dealers experience and technical knowledge that it has acquired and developed over the years with respect to the merchandising and servicing of automotive vehicles, parts, accessories and equipment; has offered, and will continue to offer, to its dealers advice, information and guidance with respect

to management, finance, merchandising and service in a dealership; and has employed, and will continue to employ, various means to assist its dealers to achieve success in their businesses. It is deemed desirable and in the best interests of the dealers and Company that the dealers adopt a uniform accounting system in order that Company may be able to evaluate the relative operating performance of each of the dealers and to develop standards that will enable the dealers to obtain the most satisfactory results from their businesses.

Since the dealers are the primary retail sales outlet for Company's products, it is essential that the dealers periodically furnish to Company reports and estimates with respect to their respective operations and future requirements to the end that Company may make its commitments for raw materials and plan the production and distribution of its products in line with potential retail sales.

IN CONSIDERATION of the foregoing and the mutual agreements herein made, the parties hereto agree as follows:

A. Company hereby authorizes Dealer as an authorized Ford dealer, and Dealer hereby accepts such authorization and assumes the obligations and responsibilities of an authorized Ford dealer as herein provided.

B. Company shall sell Company Products (as herein defined) to Dealer, and Dealer shall purchase such products from Company, upon the terms and conditions herein set forth.

C. The attached Ford Sales Agreement Standard Provisions (Form "FD-925a JAN 55") which have been read and agreed to by each party hereto, are hereby made a part hereof with the same force and effect as if set forth herein in full.

D. This agreement has been entered into by Company with Dealer in reliance upon, and in recognition of, the fact that the following person(s) substantially participate(s) in the ownership of Dealer:

NAME	ADDRESS	PERCENTAGE OF INTEREST
.....		
.....		
.....		
.....		
.....		
.....		
.....		

and that the following person(s) shall have full managerial authority and responsibility for the operating management of Dealer in the performance of this agreement:

NAME	ADDRESS	TITLE
.....		
.....		

In the event of any change in the ownership by said named person(s) in Dealer, or of any change in the managerial authority and responsibility of said named person(s) in Dealer, Dealer shall give immediate notice thereof in writing to Company, but no such change or notice thereof shall alter or modify any of the provisions of this agreement unless and until embodied in an appropriate amendment to this agreement duly executed and delivered by Company and by Dealer.

E. Dealer acknowledges notice that no one except the Vice President—Sales and Advertising, the Vice President and General Manager, or the General Manager, of Ford Division, the Secretary or an Assistant Secretary of Company, is authorized to execute this agreement or any agreement relating to the subject matter hereof on behalf of Company, or in any manner to enlarge, vary or modify its terms, and they only by an instrument in writing; and that no one, except the Vice President—Sales and Advertising, the Secretary or an Assistant Secretary of Company, is authorized to terminate this agreement on behalf of Company, and they only by an instrument in writing. This agreement shall not bind Company until it is signed by one of the officers named above. Company is hereby authorized to deliver this agreement to dealer by placing dealer's copy thereof in the United States mail in Michigan, addressed to dealer at the foregoing address.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

FORD MOTOR COMPANY

.....
(DEALER'S TRADE NAME)

By.....
(ASSISTANT SECRETARY)

By.....
(SIGNATURE AND TITLE)

.....

.....

.....

.....

~~FRANCHISE~~
~~AGREEMENT~~

FORD MOTOR COMPANY FORD SALES AGREEMENT STANDARD PROVISIONS

1. As used herein, the following terms shall have the following *DEFINITIONS* meanings, respectively:

1. (a) "COMPANY PRODUCTS" shall mean new passenger automobiles, trucks and chassis bearing the trade-mark "Ford," parts, accessories and equipment therefor, and other products, that from time to time may be offered for sale by Company to authorized Ford dealers for resale.

1. (b) "VEHICLE" shall mean any such automobile, truck or chassis.

1. (c) "DEALER PRICE" shall mean, with respect to each COMPANY PRODUCT to which it refers, the price to Dealer for such product as from time to time established by Company before deduction of any discount applicable thereto. It shall not include any charge by Company for distribution and delivery or taxes.

2. Company reserves the right to make sales to others (including *SALES TO OTHERS AND PURCHASES FROM OTHERS* without limitation other dealers) without obligation or liability of any kind to Dealer, and Dealer reserves the right to make purchases from others without obligation or liability of any kind to Company.

3. Company shall give careful consideration to each order received from Dealer for a COMPANY PRODUCT, but Company shall not be liable in any respect for failure to ship or for delay in shipment, whatever the reason or cause therefor, or for shipping over routes or by means of transportation other than as specified by Dealer. *CONSIDERATION OF ORDERS*

4. Dealer shall pay to Company for each COMPANY PRODUCT *PRICES AND CHARGES* purchased from Company by Dealer the DEALER PRICE for such product, plus Company's charge for distribution and delivery and, if not included in such price or charge for distribution and delivery, a charge equivalent to, or in reimbursement for, all applicable taxes on the manufacture, distribution, ownership, use or sale of such COMPANY

**PRICES
AND CHARGES**
(Contd.)

PRODUCT and all applicable taxes measured by the sale or receipts from the sale of such COMPANY PRODUCT. Company may change at any time and from time to time without notice the DEALER PRICE and Company's charge for distribution and delivery for any COMPANY PRODUCT. Except as otherwise specified in writing by Company, such price and such charge shall be the price and charge in effect, and delivery to Dealer shall be deemed to have been made and the order deemed to have been filled, on the date of delivery to carrier or to Dealer, whichever first shall occur. In the event Company shall increase the DEALER PRICE for any COMPANY PRODUCT, Dealer shall have the right to cancel, by notice to Company within ten (10) days after receipt by Dealer of notice of such increase, any orders for such product placed by Dealer with Company prior to receipt by Dealer of notice of such increase and unfilled at the time of receipt by Company of such notice of cancellation.

TERMS AND TITLE

5. (a) Payment. Payment for each COMPANY PRODUCT purchased by Dealer shall be made in cash unless the invoice provides otherwise, in which event the terms of the invoice shall govern. Receipt of any check, draft or other commercial paper shall not constitute payment until Company has received cash in the full amount thereof. Dealer shall pay all collection charges.

5. (b) Title. For the purpose of securing payment to Company, title to each COMPANY PRODUCT shall be and remain with Company until receipt by Company in cash of the full purchase price therefor, together with all charges provided in paragraph 4, unless the sale is on credit, in which event title shall pass on delivery to carrier or to Dealer, whichever first shall occur. Company shall have the right to retake possession of and resell each COMPANY PRODUCT until title to such product shall have passed to Dealer.

5. (c) Risk of Loss and Claims. Each shipment shall be at the risk of Dealer and Dealer shall be responsible for filing all claims for loss of or damage to any COMPANY PRODUCT while in the possession of any carrier. Company shall, however, provide reasonable assistance to Dealer in accordance with its then current procedures in processing all such claims.

5. (d) Demurrage and Diversion Liability. Dealer shall be responsible for and shall pay any and all demurrage, storage and other charges accruing after arrival of any shipment at its destination. In the event Dealer shall fail or refuse for any reason to accept delivery of any COMPANY PRODUCT ordered by Dealer, Dealer shall pay Company the

amount of all expenses incurred by Company in shipping such product to Dealer; and Dealer also shall pay Company the amount of all expenses incurred by Company in returning such product to the original shipping point or diverting it to another destination, as the case may be, but in no event shall Dealer pay Company in connection with any such diversion an amount in excess of the expense of returning such product to its original shipping point.

6. (a) DEALER PRICE Reductions, Current Model VEHICLES and Factory Installed Optional Equipment and Accessories. In the event Company at any time shall reduce its DEALER PRICE for (i) any type and model of VEHICLE being offered for sale by Company as a current type and model on the effective date of such reduction and/or (ii) any factory installed optional equipment or factory installed accessory for use on such a VEHICLE, Company shall refund or credit to Dealer, with respect to each unused, undamaged and unsold VEHICLE (limited as hereinafter provided in subparagraph 6 (d)) of such current type and model in Dealer's stock on the effective date of such reduction, an amount equal to the amount by which the cost to Dealer (as hereinafter defined in subparagraph 6 (e)) of such VEHICLE and all factory installed optional equipment and all factory installed accessories, if any, thereon, exceeds the new DEALER PRICE or the sum of the new DEALER PRICES (including any increases), as the case may be, established by Company for such a VEHICLE with the same factory installed optional equipment and factory installed accessories, if any, provided that the amount of such difference exceeds the sum of Five Dollars (\$5.00), and provided further, that Company shall have made no substantial change in the capacity, performance, size, weight, design, and/or specifications of such VEHICLE, factory installed optional equipment or factory installed accessories.

**REFUNDS ON DEALER
PRICE REDUCTIONS
AND MODEL CHANGES**

6. (b) Lower DEALER PRICE on Model Change. In the event Company, at the time it introduces any new model of VEHICLE, shall establish, for (i) any type of VEHICLE of such new model for which there is an equivalent type of VEHICLE of the next preceding model, and/or (ii) any factory installed optional equipment or factory installed accessory for use on such new model VEHICLE for which there is an equivalent type of factory installed optional equipment or factory installed accessory, as the case may be, for use on an equivalent type of VEHICLE of the next preceding model, a DEALER PRICE below the DEALER PRICE in effect for such equivalent type of VEHICLE of the next preceding model, or for such equivalent type of factory installed optional equipment or factory installed accessory for use on the next preceding model VEHICLE, Company shall refund or credit to Dealer with respect

**REFUNDS ON DEALER
PRICE REDUCTIONS
AND MODEL CHANGES
(Contd.)**

to each unused, undamaged and unsold VEHICLE (limited as hereinafter provided in subparagraph 6 (d)) of such equivalent type of the next preceding model in Dealer's stock on the date fixed by Company as the date for introduction for sale to the public of such type of new model VEHICLE, an amount equal to the amount by which the cost to Dealer (as hereinafter defined in subparagraph 6 (e)) of such equivalent type VEHICLE of the next preceding model and all factory installed optional equipment and factory installed accessories, if any, thereon, exceeds the DEALER PRICE or the sum of the DEALER PRICES (including any increases), as the case may be, established by Company for the equivalent type of new model VEHICLE with the same or equivalent factory installed optional equipment or factory installed accessories, if any, provided that the amount of such difference exceeds the sum of Five Dollars (\$5.00).

Company shall have the sole right to determine whether or not types of VEHICLES, factory installed optional equipment, and factory installed accessories, or combinations thereof, shall be deemed to be equivalent for the purposes of this subparagraph 6 (b). In making such determination, Company shall take into consideration, among other things, the relative capacities, performances, sizes, weights, designs, and/or specifications of such VEHICLES, factory installed optional equipment, and factory installed accessories.

6. (c) Applications for Refunds and Credits. Any refund or credit for which provision is made in this paragraph 6 shall be made by Company only if Dealer shall submit written application therefor on a form furnished by Company and within the time specified by Company in writing. Dealer shall support each application with evidence satisfactory to Company, and for a period of one (1) year after submission of such application shall permit Company during all reasonable hours to audit Dealer's records with respect to such application.

6. (d) Limitations on Refunds and Credits. Refunds and credits under subparagraphs 6 (a) and 6 (b) above shall be limited to VEHICLES shown by the records of Company to have been purchased from Company during the twelve (12) months' period next preceding the effective date of the applicable price reduction or, in the case of subparagraph 6 (b), the applicable introduction date.

Notwithstanding anything to the contrary in this paragraph 6, Company shall have no obligation to make any refund or credit hereunder with respect to: (i) any VEHICLE used as a demonstrator or any equipment or accessory thereon; (ii) any reduction in the amount of Company's charge for distribution and delivery or charge for taxes; (iii) any reduction in the amount of any contribution or any other sum for advertising or sales promotion; (iv) any reduction in the DEALER PRICE of any optional

equipment or any accessory, or any lower DEALER PRICE for any optional equipment or any accessory, except as specified in subparagraphs 6 (a) and 6 (b) of this paragraph; (v) any reduction in the DEALER PRICE made by Company, or any lower DEALER PRICE established by Company, by reason of any law, order or regulation of any government or governmental agency or in an effort to cooperate with any government or governmental agency; or (vi) any refund, credit, rebate, allowance, discount or payment made or allowed by Company with respect to any COMPANY PRODUCT unless Company shall have announced it to Dealer as a reduction in the DEALER PRICE of such product and it is reflected in Company's Suggested List Price for such product.

6. (c) *DEFINITION of "cost to Dealer."* The phrase "cost to Dealer," as used in subparagraphs 6 (a) and 6 (b) above, shall be deemed to mean the DEALER PRICE, or the sum of the DEALER PRICES, as the case may be, at which the VEHICLE or the VEHICLE with all equipment or accessories, if any, thereon, was purchased from Company, less all refunds, credits, rebates, allowances, discounts and other payments made by Company with respect to such VEHICLE, equipment and accessories and all refunds, credits, rebates, allowances, discounts and other payments with respect thereto for which application could have been made but was not made.

7. Company reserves the right to make changes in COMPANY PRODUCTS at any time and from time to time without notice to Dealer and without incurring any obligation with respect to any COMPANY PRODUCT theretofore ordered or purchased by or delivered to Dealer.

**CHANGES IN
COMPANY PRODUCTS**

8. (a) *Company Warranty.* Company warrants to Dealer (except as hereinafter provided) each part of each COMPANY PRODUCT sold by Company to Dealer to be free under normal use and service from defects in material and workmanship until such product has been driven, used or operated for a distance of four thousand (4,000) miles or for a period of ninety (90) days from the date of delivery to the original retail purchaser, whichever event first shall occur. Company makes no warranty whatsoever with respect to tires or tubes. Company's obligation under this warranty is limited to replacement of, at Company's factory or at a location designated by Company, or credit for, such parts as shall be returned to Company with transportation charges prepaid and as shall be acknowledged by Company to be defective. Dealer shall notify Company of any such defective part of which Dealer obtains knowledge within twenty (20) days after Dealer obtains such knowledge. This warranty shall not apply to any COMPANY PRODUCT that has been subject to

WARRANTY

WARRANTY
(Contd.)

misuse, negligence or accident, or in which parts not made or supplied by Company are used if, in the sole judgment of Company, such use affects its performance, stability or reliability, or which shall have been altered or repaired outside of Company's own factory in a manner which, in the sole judgment of Company, affects its performance, stability or reliability. This warranty is expressly in lieu of all other warranties, express or implied, and of all other obligations or liabilities on the part of Company, except such obligation or liability as Company may assume by its Warranty and Policy Manual for Authorized Ford Dealers or other separate written instrument.

8. (b) *Dealer Warranty.* Dealer, acting on Dealer's own behalf only, shall execute and deliver a warranty similar to the foregoing and in form satisfactory to Company in connection with each retail sale by Dealer of a VEHICLE, each sale by Dealer of a COMPANY PRODUCT to another authorized Ford dealer or associate dealer, and each sale by Dealer, whether at wholesale or retail, of a part, accessory or equipment for a COMPANY PRODUCT. Dealer shall perform and fulfill promptly all of the terms and conditions of each such warranty.

8. (c) *Reimbursement of Dealer Warranty Claims.* Company shall replace each part returned under Company's above warranty to Dealer and acknowledged by Company to be defective, or credit Dealer therefor with an amount not less than the amount of Company's then current DEALER PRICE for such part, provided such part is returned with all charges prepaid within the time provided by and in accordance with Company's then current instructions relating to such a return. Company also shall reimburse Dealer on the basis of the lowest applicable rate for transportation by common carrier, for Dealer's cost of returning such part. In addition, Company shall pay or credit to Dealer with respect to each such part replaced by Dealer and installed by Dealer free of charge to its customer, an amount which shall be not less than one-half of an amount computed by multiplying the time for installing such a part specified in Company's then current "Suggested Time Schedule" by Dealer's regular retail hourly labor rate as then approved by Company as a basis for reimbursement under the provisions of this agreement.

Each part returned to Company by Dealer shall be accompanied by a notice of the disposition of such part desired by Dealer in the event the claim of defect shall not be allowed; in the absence of such notice Company may dispose of such part in such manner as it shall determine, and shall not be liable in any manner whatever by reason of such disposition. In the event Dealer shall request such part to be returned, Dealer shall bear the cost of such return. Dealer shall indemnify Company against all claims and liability by reason of Company's disposition pursuant to the provisions of this agreement of any part returned to Company.

9. Dealer, acting on Dealer's own behalf only, shall execute and deliver to each retail purchaser of a VEHICLE from Dealer a "Ford Dealer's Service Policy" on a form furnished by Company. Dealer shall perform and fulfill promptly all of the terms and conditions of each such Policy. Dealer hereby authorizes Company to charge his account for each inspection on a VEHICLE sold by Dealer performed by another authorized Ford dealer under a Ford Dealer's Service Policy executed and delivered by Dealer in such amount as may be provided therefor in such Policy, and to credit his account for each inspection on a VEHICLE sold by another authorized Ford dealer performed by Dealer under a Ford Dealer's Service Policy executed and delivered by the selling dealer in such amount as may be provided therefor in such Policy.

**FORD DEALERS'
SERVICE POLICY**

10. Dealer shall inspect and condition each VEHICLE before delivery in accordance with pre-delivery inspection and conditioning schedules furnished from time to time by Company to Dealer.

**PRE-DELIVERY
INSPECTION**

11. Dealer shall:

**OPERATION
OF BUSINESS**

11. (a) **Sales and Service Responsibility.** Develop the sale of COMPANY PRODUCTS, and render service with respect thereto (including, without limitation, all service to which a purchaser of a COMPANY PRODUCT, whether from Dealer or any other authorized Ford dealer, may be entitled), to the satisfaction of Company in such locality as from time to time may be designated by Company (hereinafter called Dealer's locality); but Dealer shall not be limited to Dealer's locality in making sales or in rendering service.

11. (b) **Place of Business, Facilities and Equipment.** Establish, maintain and equip a place or places of business, including a salesroom, service facilities and a used passenger automobile and truck outlet, in a manner satisfactory to Company; install and maintain therein tools, machinery and equipment recommended by Company or of a quality equivalent thereto; maintain in the operation of such place or places of business not less than the business hours customary in the trade; and display conspicuously thereat an assortment of Ford signs reasonably satisfactory to Company.

11. (c) **Personnel.** Employ adequate trained personnel in all departments, including, without limitation, competent salesmen sufficient to solicit to the satisfaction of Company all potential purchasers of COMPANY PRODUCTS in Dealer's locality and competent service mechanics sufficient to render prompt, workmanlike service to the satis-

**OPERATION
OF BUSINESS**
(Contd.)

faction of Company with respect to COMPANY PRODUCTS in such locality; and send representative employees of Dealer to such training schools as Company may conduct from time to time for personnel of its dealers.

11. (d) Accounting System. Install and maintain an accounting system in accordance with the Manual of Accounting Procedure for Ford Dealers. Any such system shall not, however, be exclusive of other accounting systems Dealer may desire to install or maintain.

11. (e) Reports. Furnish to Company each month on or before the date specified by Company a complete statement, on a form prescribed by Company, reflecting the true financial condition and operating results of Dealer's business as of the end of the preceding month; submit regularly and promptly to Company on dates specified by Company reports entitled "Dealer's Ten Day Reports," or similar reports, accurately and fully prepared on forms prescribed by Company; and submit such supplementary reports and data relating to Dealer's financial condition, the sale and service of COMPANY PRODUCTS and Dealer's operations as Company from time to time may require. All such statements, reports and data shall be based upon the Accounting Procedure for Ford Dealers required to be installed and maintained by Dealer pursuant to the provisions of subparagraph 11(d) hereof wherever such procedure is applicable.

11. (f) Dealer's Stocks. Maintain a stock of VEHICLES of the latest model equivalent to between eight and twelve per cent (8% and 12%) of Dealer's retail deliveries of such VEHICLES during the preceding twelve (12) months, varying between those percentages in different months in accordance with the estimated seasonal requirements of Dealer for the different months; and maintain stocks of genuine Ford parts, and accessories offered for sale by Company, of an assortment and in a quantity adequate to meet the current demand therefor. In the event Dealer has not been operating as an authorized Ford dealer for the twelve (12) months preceding the date of this agreement, Dealer shall, until such time as Dealer has been so operating, maintain at all times a stock of VEHICLES equivalent to Dealer's estimated sales for the next thirty (30) days. This requirement that Dealer maintain stocks shall be subject to Company filling Dealer's orders therefor.

11. (g) Dealer's Orders. Furnish Company each month, on the date or dates designated by Company, an order or orders for the number of VEHICLES Dealer will purchase during the next succeeding month, and in connection therewith or separately, as requested by Company, estimates of Dealer's requirements of VEHICLES from Company for such succeeding months as Company from time to time may request. Dealer

also shall furnish to Company each month, on the date or dates designated by Company, an order or orders for Dealer's requirements of genuine Ford parts and other COMPANY PRODUCTS other than VEHICLES.

11. (h) *Customer Deposits.* Hold in trust each deposit of cash and/or property received from a customer in anticipation of a future delivery of a passenger automobile, truck or chassis to such customer until such delivery is consummated; and until such delivery is consummated (i) keep any such cash in a separately designated trust fund not commingled with Dealer's own funds, and (ii) hold title to any such property in trust, and not place or permit the placing of any lien on such property, or sell the same without at the time placing in such a trust fund a sum in cash equal to the amount of the allowance granted to the customer by Dealer with respect thereto. Dealer shall enter into an agreement with each prospective customer at the time such deposit or transfer is made, binding Dealer with respect to such monies or property as provided above.

11. (i) *Customer Handling.* Make every reasonable effort to handle to the satisfaction of Company all matters relating to the sale and servicing of COMPANY PRODUCTS in Dealer's locality, and in pursuance thereof establish regular contact, either by correspondence or personal interview, with owners and users of COMPANY PRODUCTS in such locality; and report promptly to Company each complaint received by Dealer relating to any COMPANY PRODUCT which Dealer cannot readily remedy, together with the name and address of the complainant.

11. (j) *Demonstrators.* Keep available at all times in good running order and presentable condition for demonstration purposes an adequate number of VEHICLES of the latest model (but not at any time less than one passenger automobile and one truck).

11. (k) *Trade Practices and Advertising.* Conduct Dealer's business in a manner that will reflect favorably at all times on Company and COMPANY PRODUCTS and the good name, good will and reputation thereof; and avoid in every way any practice or advertising that is or might be detrimental to Company, COMPANY PRODUCTS or the public, or to which Company may object as being detrimental to the good name, good will or reputation of Company or COMPANY PRODUCTS.

11. (l) *Inspections and Tests.* Allow representatives of Company, at any reasonable time and at reasonable intervals, to examine Dealer's place or places of business and Dealer's stocks of COMPANY PRODUCTS, to test Dealer's equipment and facilities, and to examine Dealer's records, contracts and accounts relating to the sale or service of COMPANY PRODUCTS, to the end that Company may be assured that Dealer is carrying out all of the terms of this agreement.

**DEALER NOT AGENT
OF COMPANY**

12. This agreement does not in any way create the relationship of principal and agent between Company and Dealer; and under no circumstances shall Dealer be considered the agent of Company. Dealer shall not act or attempt to act, or represent himself, directly or by implication, as agent of Company or in any manner assume or create, or attempt to assume or create, any obligation on behalf or in the name of Company.

**TRADE-MARKS AND
TRADE NAMES**

13. (a) *Use in Firm Name.* Dealer may use the word "Ford" in Dealer's firm name or trade name but only after having obtained Company's prior written approval. On request of Company at any time, Dealer shall discontinue promptly and permanently the use of the word "Ford" in Dealer's firm name or trade name and promptly shall take such steps as may be necessary or appropriate in the opinion of Company to change Dealer's firm name or trade name to eliminate the word "Ford" therefrom.

13. (b) *Limitations on Use.* Dealer shall not use the word "Ford" or any other trade-mark or trade name used or claimed by Company, or coined words or combinations containing the same or parts thereof, in connection with any business conducted by Dealer other than in dealing in COMPANY PRODUCTS; except that the word "Ford" may be used in connection with a business associated or affiliated with Dealer as Dealer's used passenger automobile and truck outlet if Dealer obtains Company's prior written approval and if Dealer retains the right to require said associated or affiliated business to discontinue such use at any time Dealer may direct, and Dealer shall direct such discontinuance on request of Company at any time.

Dealer shall not contest the right of Company to exclusive use of any trade-mark or trade name used or claimed by Company.

GENUINE PARTS

14. Dealer shall not sell or offer for sale or use in the repair of any COMPANY PRODUCT, as a genuine new Ford part, any part that is not in fact a genuine new Ford part manufactured by or for Company.

**COOPERATIVE
FORD DEALERS'
ADVERTISING FUND**

15. (a) *Fund.* Company and various authorized Ford dealers heretofore have agreed that it would be to their mutual interest to establish and maintain by joint contributions a fund, known as the Cooperative Ford Dealers' Advertising Fund (hereinafter referred to as the Fund), that is subject to the control of, and is administered by, Company in carrying out a coordinated, effective and economical advertising program (hereinafter referred to as the Advertising Program) for the benefit of

such dealers; and accordingly, a Fund consisting of two portions, the Company's portion and the Dealer's portion, heretofore has been established and is being administered by Company for the purpose of carrying out the Advertising Program.

15. (b) *Company's Portion.* Company's portion of the Fund shall consist of Company's contributions. Company shall contribute to the Fund the sum of Four Dollars (\$4.00) for each VEHICLE purchased from Company by Dealer hereunder except any VEHICLE with respect to which Dealer shall receive a refund under the provisions of subparagraph 15 (c). Company's portion of the Fund shall be expended solely for such advertising as Company in its opinion shall determine will carry out the Advertising Program most effectively.

15. (c) *Dealer's Portion.* Dealer's portion of the Fund shall consist of Dealer's contributions, which Company hereby is authorized to collect from Dealer. Dealer shall contribute to the Fund the sum of Thirteen Dollars (\$13.00) for each new VEHICLE purchased by it from Company hereunder, provided, that in the event Dealer resells or leases any such VEHICLE to the United States, any state, or any other governmental authority, Dealer shall be entitled to a refund of any such sum so paid with respect to such VEHICLE. Company shall maintain, except as hereinafter provided, a joint account or accounts with respect to the contributions of Dealer and such other dealers located in the same community, town or city as Dealer and in such other communities, towns or cities as, in the opinion of Company, may form a common area with such community, town or city for purposes of local advertising. In the event that, in the opinion of Company, there are no other such dealers, Company shall maintain a separate account of Dealer's contributions.

Dealer's portion of the Fund shall be expended solely for local advertising through the use of such media as in the opinion of Company will carry out the Advertising Program most effectively. As an aid in formulating such opinion, Company from time to time may request Dealer to comment upon advertising media available in Dealer's locality. The cost of such local advertising shall be charged to the joint or separate account, as the case may be, established as above provided. Suitable reference shall be made in such advertising to such dealers, either by mention of the firm name or names and address or addresses thereof or, if in the opinion of Company such reference is impracticable, by an appropriate group reference. Preparation and handling expenses and all other costs of any character incurred in connection with such local advertising shall be included in the cost which may be charged to such joint or separate account.

**COOPERATIVE
FORD DEALERS'
ADVERTISING FUND
(Contd.)**

15. (d) Discontinuance, Suspension and Modification. Company may discontinue the Fund at any time by written notice to all authorized Ford dealers, including Dealer. Company by similar notice also may suspend, modify or change from time to time the contributions to be made by Company and by Dealer to the Fund; provided, however, that without Dealer's written consent no such suspension, modification or change shall be made that will result in Dealer's contribution per VEHICLE being greater in relation to Company's contribution per VEHICLE than Thirteen Dollars (\$13.00) is to Four Dollars (\$4.00) or which will increase the amount of Dealer's contribution per VEHICLE over the amount specified in subparagraph 15 (c) above.

15. (e) Refunds Upon Termination or Discontinuance. In the event of the termination of this agreement or the discontinuance of the Fund, Company shall refund to Dealer as soon as practicable after the effective date of such termination or discontinuance the amount of any unexpended balance outstanding in Dealer's account in Dealer's portion of the Fund; provided, however, that if Dealer's contributions shall have been credited to a joint account, Dealer shall be refunded an amount which shall bear the same relation to the unexpended balance of such account as the sum of Dealer's contributions to such account during the twelve (12) months' period immediately preceding the effective date of such termination or discontinuance bears to the total contributions to such account during such period by all dealers, including Dealer, whose Ford Sales Agreements are in effect as of the effective date of such termination or discontinuance.

In the event of the termination of this agreement or the discontinuance of the Fund, Company may dispose of any unexpended balance remaining in Company's portion of the Fund as it sees fit.

15. (f) Accounting. Company shall furnish to Dealer as soon as practicable following the close of each calendar year during the continuance of the Fund, and in the event of termination of this agreement or discontinuance of the Fund, as soon as practicable after the effective date of such termination or discontinuance, a statement of account with respect to the joint or separate account to which Dealer's contributions shall have been credited.

**OTHER ADVERTISING
AND SALES
PROMOTION FUNDS**

16. In addition to the contributions provided for in paragraph 15, Company may collect from Dealer in connection with Dealer's purchases of VEHICLES such additional sums for advertising and sales promotion purposes as may be authorized by Dealer.

TERMINATION

17. (a) Termination by Either Party. This agreement may be terminated at any time at the will of either party by notice to the other party, and such termination shall operate to cancel each order for a COMPANY PRODUCT theretofore received by Company from Dealer and unfilled (as defined in paragraph 4) on the effective date of termination. In the event of termination by Dealer, notice of termination shall be given to Company not less than thirty (30) days prior to the termination date if Company so requests, and in the event of termination by Company, notice of termination shall be given to Dealer not less than ninety (90) days prior to the termination date, except that (1) notice of termination effective immediately may be given by either party in any of the following events: (i) death of Dealer if Dealer is an individual or of any partner if Dealer is a partnership, (ii) dissolution of Dealer if Dealer is a corporation or co-partnership, (iii) insolvency or bankruptcy of Dealer, appointment by a court of a receiver, trustee or custodian for Dealer or Dealer's business, or an assignment by Dealer for benefit of creditors, (iv) failure of either party to obtain any license required to enable such party to carry out its obligations under this agreement, or the revocation or the suspension of any such license; and (2) notice of termination effective immediately may be given by Company in any of the following events: (i) any assignment or attempted assignment by Dealer of any interest in this agreement without Company's written assent, (ii) any sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise of any major interest in the direct or indirect ownership or management of Dealer, (iii) failure of Dealer for any reason to function in the ordinary course of business, or failure of Dealer for any reason to keep his place of business open during the hours customary in the trade, (iv) a disagreement between or among principals, partners, managers, officers or stockholders of Dealer which in the opinion of Company may affect adversely the ownership, operation, management, business or interest of Dealer or Company, or (v) conviction in a court of competent jurisdiction of Dealer, or a partner, manager, principal officer or major shareholder for any violation of law tending, in Company's opinion, to affect adversely the operation or business of Dealer or the good name, good will or reputation of Company, COMPANY PRODUCTS or Dealer. Dealer shall advise or cause Company to be advised immediately in writing of the happening of any of the above specified events.

17. (b) New Agreement. The termination of this agreement by the execution and delivery of a new Ford Sales Agreement between the parties hereto shall not give rise to the rights and obligations for which provision is made in paragraphs 15, 18, 20 and 21, unless otherwise specified in such new agreement.

**OBLIGATIONS
OF DEALER UPON
TERMINATION**

18. Upon termination of this agreement Dealer shall cease to be an authorized Ford dealer and shall:

18. (a) *Sums Owing Company.* Pay to Company all sums owing from Dealer to Company.

18. (b) *Discontinuance of Use of Trade-marks and Trade Names.* (i) Remove at Dealer's expense all signs erected or used by Dealer, or by a business associated or affiliated with Dealer, and bearing the name "Ford" or any other trade-mark or trade name used or claimed by Company (except as such use may be permitted under existing agreements relating to products of Company other than COMPANY PRODUCTS), or any word indicating that Dealer is an authorized Ford dealer with respect to any COMPANY PRODUCT; (ii) erase or obliterate from letterheads, stationery, repair order forms and other forms used by Dealer or by a business associated or affiliated with Dealer the word "Ford" and all other trade-marks and trade names used or claimed by Company (except as such use may be permitted under existing agreements relating to products of Company other than COMPANY PRODUCTS), and all words indicating that Dealer is an authorized Ford dealer with respect to any COMPANY PRODUCT; (iii) permanently discontinue all advertising of Dealer as an authorized Ford dealer with respect to any COMPANY PRODUCT; (iv) permanently discontinue the use of the word "Ford" in Dealer's firm name or trade name and take such steps as may be necessary or appropriate in the opinion of Company to change such firm name or trade name to eliminate the word "Ford" therefrom; and (v) thereafter refrain from doing anything that would indicate that Dealer is or was an authorized Ford dealer in any COMPANY PRODUCT.

18. (c) *Assignment of Retail Orders and Customer Deposits.* Transfer or assign by appropriate documents to Company, or its nominee, all retail orders for COMPANY PRODUCTS which Dealer has not filled, and all customer deposits made thereon; and deliver to Company the names and addresses of Dealer's customers and of prospective purchasers of COMPANY PRODUCTS from Dealer.

**SUCCESSOR TO
DEALER IN THE
EVENT OF DEATH
OR RESIGNATION**

19. In the event of the termination of this agreement by reason of the death of Dealer if Dealer is an individual, the death of the principal owner of Dealer named in paragraph D of this agreement if Dealer is a partnership or corporation, or the resignation because of incapacity for reasons of health of Dealer, Company shall offer a Ford Sales Agreement, limited by appropriate amendment to a term of one (1) year and subject to termination during said term as provided therein, to a son(s), son(s)-in-law, brother(s), brother(s)-in-law or nephew(s) of such deceased

person, or of the principal owner of Dealer in the event of such resignation, nominated by Dealer, provided that (i) such nominee shall have been participating in the management of Dealer for a reasonable period of time and shall be named in paragraph D of this agreement at the time of such termination, (ii) Dealer shall have notified Company in writing of such nomination prior to such termination (any such nomination shall be subject to change by Dealer by notice in writing to Company of such change prior to such termination), and (iii) such nominee shall possess qualifications, capital and facilities which Company, in its sole discretion, shall determine at the time of such termination to be satisfactory to it. In the event that more than one nominee shall qualify under the above conditions to receive an offer of such a Ford Sales Agreement, Company, in its sole discretion, shall determine to which nominee or nominees such Ford Sales Agreement shall be offered. At least ninety (90) days prior to the expiration of the one (1) year term of such Ford Sales Agreement, Company shall determine in its sole discretion whether or not such nominee or nominees possess qualifications, capital and facilities to carry on the dealership satisfactory to Company and, in the event Company shall so determine that such nominee or nominees do possess such qualifications, capital and facilities, Company shall offer to such nominee or nominees a Ford Sales Agreement in the form then in effect between Company and its authorized Ford dealers.

20. Upon termination of this agreement by Company, Company shall purchase or accept upon return from Dealer and Dealer shall sell or return to Company, or upon termination of this agreement by Dealer, Company shall have the option to purchase or reacquire from Dealer:

**REACQUISITION OF
COMPANY PRODUCTS
AND ACQUISITION
OF DEALER'S SIGNS,
TOOLS AND EQUIPMENT**

20. (a) **VEHICLES.** Each unused and undamaged VEHICLE (together with all factory installed accessories and optional equipment thereon) in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such VEHICLE is in first-class saleable condition, is of a type and model being offered for sale by Company on such date of termination as a current type and model, and was purchased by Dealer from Company, as shown by the records of Company. The price for such VEHICLE shall be the DEALER PRICE at which such VEHICLE was purchased from Company, plus Company's charge or charges for distribution and delivery and taxes paid by Dealer at the time of such purchase and less all prior refunds, credits, rebates, allowances, discounts and other payments made by Company with respect to such VEHICLE and all refunds, credits, rebates, allowances, discounts and other payments with respect thereto for which Dealer could have applied but did not apply, provided such VEHICLE (and the accessories and equipment thereon) has not been altered outside Company's factory.

**REACQUISITION OF
COMPANY PRODUCTS
AND ACQUISITION
OF DEALER'S SIGNS,
TOOLS AND EQUIPMENT
(Contd.)**

Delivery of all VEHICLES reacquired by Company or returned by Dealer pursuant to the provisions of this paragraph 20 shall be made at Dealer's place of business unless Company in writing directs otherwise, in which event Company shall pay the transportation costs to the place of delivery.

20. (b) Parts and Accessories. Each new, unused and undamaged part in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such part is in first-class saleable condition, and provided further, that such part was sold by Company for use in a VEHICLE of a model being offered for sale by Company on the effective date of such termination as a current model or of any of the three (3) next preceding models, and was purchased by Dealer from Company, as shown by the records of Company. The price for such part shall be the DEALER PRICE for such a part in effect on such date of termination, less any cash discount at the rate in effect at the time of termination.

Each new, unused and undamaged accessory in Dealer's stock and unsold by Dealer on the effective date of such termination, provided such accessory is in first-class saleable condition, and provided further, that such accessory was purchased by Dealer from Company, as shown by the records of Company, and provided further, that such accessory was sold by Company for use in a VEHICLE of a model being offered for sale as a current model by Company on such date of termination or was purchased from Company within the sixty (60) day period preceding the date of giving of notice of such termination. The price for such accessory shall be at the DEALER PRICE for such an accessory in effect on such date of termination, less any cash discount at the rate in effect at the time of termination.

Delivery of all parts and accessories reacquired by Company or returned by Dealer pursuant to the provisions of this paragraph 20 shall be made at Dealer's place of business unless Company in writing directs otherwise, in which event Dealer, at Dealer's own expense, shall pack and box all such parts and accessories carefully and, at Company's expense ship them to Company's Parts Depot from which Dealer usually has been supplied, or to such other destination as Company may direct. In the event Dealer fails so to pack and box such parts and accessories, Company may do so and deduct the expense thereof from the price of such parts and accessories.

20. (c) Dealer's Signs. Each sign bearing the name "Ford" which is located at a place of business of Dealer, which is owned by Dealer on the effective date of such termination, and which Dealer acquired in order to comply with the provisions of paragraph 11 (b), at a price and upon terms and conditions to be mutually agreed upon by Company and Dealer.

20. (d) Tools and Mechanical Equipment. All tools and mechanical equipment owned by Dealer on the effective date of such termination, which were designed especially for servicing COMPANY PRODUCTS and are of a type recommended in writing by Company, at a price and upon terms and conditions to be mutually agreed upon by Company and Dealer.

20. (e) Title. Dealer shall furnish to Company, in form satisfactory to Company, a bill of sale of all property purchased by Company or returned by Dealer pursuant to the provisions of this paragraph 20, together with evidence satisfactory to Company that Dealer has complied with all applicable bulk sales laws and that such property is free and clear of all claims, liens and encumbrances.

20. (f) Payment. Company shall pay Dealer for the property purchased or reacquired by it or returned by Dealer pursuant to the provisions of this paragraph 20 promptly following Dealer's fulfillment of all of Dealer's obligations under paragraph 18 and this paragraph 20.

21. Upon termination of this agreement by Company solely for a reason other than any of those described in clauses (1)(ii), (1)(iii), (2)(i), (2)(ii) and (2)(v) of paragraph 17 (a), Company shall make monthly payments to Dealer with respect to Dealer's place or places of business as hereinafter provided.

**TERMINATION
PAYMENTS WITH
RESPECT TO
DEALER'S PREMISES**

21. (a) Amount of Payments. The amount of each such monthly payment shall be determined by multiplying One Dollar (\$1.00) by the total number of VEHICLES purchased by Dealer from Company during the twelve (12) months immediately preceding the effective date of termination; provided, however, that in no event shall the amount of any such payment for any month exceed the sum of the rent paid by Dealer for such month for all eligible premises (as defined in subparagraph 21 (c)) leased by Dealer and the fair rental value for such month, as determined by Company, of all eligible premises owned by Dealer.

21. (b) Period of Payments. The period for which Company shall make such monthly payments shall commence with the ninety-first (91st) day following the effective date of termination and shall continue for a period of twelve (12) months.

21. (c) Eligible Premises. The premises with respect to which Company shall make such monthly payments (herein called "eligible premises") shall be the place or places of business that are being used by Dealer for the purpose of carrying out Dealer's obligations under this

**TERMINATION
PAYMENTS WITH
RESPECT TO
DEALER'S PREMISES
(Contd.)**

agreement at the time Dealer shall receive notice of termination and that shall be owned or leased by Dealer at such time and continuously thereafter until a date more than ninety (90) days subsequent to the effective date of termination. In the event such place or places of business shall be used partially for the purpose of carrying out Dealer's obligations under this agreement, only that portion of such place or places of business determined by Company to have been used for such purpose shall be included in the term "eligible premises."

21. (d) Effect of Sale, Lease or Occupancy. In the event at any time within fifteen (15) months after the effective date of termination, (i) any place of business or part thereof that is an eligible premise shall be occupied by anyone for any purpose, or (ii) such place of business or part thereof in the opinion of Company could be occupied by any business with which Dealer may be associated, or (iii) Dealer shall sell such place of business or part thereof, if owned by Dealer, or anyone shall offer to Dealer to purchase the same at a price that in Company's opinion is a fair price, or (iv) Dealer shall lease to another such place of business or part thereof, or anyone shall offer to Dealer to lease the same, or to accept an assignment of Dealer's lease or leases thereof, if any, for a consideration that in Company's opinion is a fair consideration, or (v) Dealer's lease or leases, if any, of such place of business or part thereof shall expire or would expire if not renewed by Dealer or Dealer's failure to act, such place of business thereupon shall cease to be an eligible premise for any purpose under this paragraph 21, and Company shall be under no obligation to make any payment with respect thereto for any period after the happening of such event, and the amount of the monthly payment provided in subparagraph 21 (a) above shall be reduced proportionately.

21. (e) Application. Dealer shall make a separate written application to Company for each monthly payment to be made pursuant to this paragraph 21. Each such application shall be upon a form furnished by Company, and shall be filed with Company within sixty (60) days after the expiration of the month for which it is made. Company shall make payment on each application within ninety (90) days after receipt thereof.

Each application must be supported by proof satisfactory to Company, and Company shall have access to Dealer's premises and may audit Dealer's books and records with respect to each such application at all reasonable times within six (6) months after receipt of such application from Dealer hereunder. Dealer's failure to file application as herein provided shall excuse Company from all obligations hereunder.

22. Dealer acknowledges that no representation or statement has been made to him in behalf of Company that in any way tends to change or modify the terms, or any of them of this agreement, or that in any manner prevents this agreement from becoming effective; and further acknowledges that there is no other agreement or understanding, either oral or in writing, between the parties affecting this agreement or relating to the subject matter hereof.

REPRESENTATIONS

23. This agreement terminates and supersedes all prior Ford Sales Agreements, if any, between the parties hereto, except that all unexpended balances in the Cooperative Ford Dealers' Advertising Fund to the account of Company and Dealer, respectively, shall remain in such Fund, subject, however, to the provisions of this agreement, and except that this agreement shall not operate to cancel any of Dealer's unfilled orders with Company for any COMPANY PRODUCTS placed with Company pursuant to the provisions of any Ford Sales Agreement terminated and superseded by this agreement.

**TERMINATION OF
PRIOR AGREEMENTS**

24. Neither this agreement nor any right hereunder or interest herein may be assigned by Dealer without the prior written assent of Company, executed by one of the officers authorized to execute this agreement.

ASSIGNMENT

25. In the event any provision of this agreement shall be determined to be invalid or unenforceable and prohibited by the laws of the state or place where it is to be performed, this agreement shall be considered divisible as to such provision, and such provision shall be inoperative and shall not be part of the consideration moving from either party to the other, and the remaining provisions of this agreement shall be valid and binding and of like effect as though such provision were not included herein.

SEPARABILITY

26. The waiver by either party, or the failure by either party to claim a breach, of any provision of this agreement shall not be, or be held to be, a waiver of any subsequent breach, or as affecting in any way the effectiveness, of such provision.

**NO IMPLIED
WAIVERS**

**TRANSACTIONS
AFTER TERMINATION
NOT A RENEWAL**

27. In the event either party has any business relations with the other party after termination of this agreement, such relations shall not be construed as a renewal of this agreement or as a waiver of such termination, but all such transactions shall be governed by terms identical with the provisions of paragraphs 4 and 5 of this agreement unless the parties hereto execute a new agreement superseding this agreement.

**LIMITATION
OF COMPANY'S
LIABILITY**

28. The requirements of this agreement as to the facilities to be supplied by Dealer, as to the conduct of the business of dealing in COMPANY PRODUCTS and as to relationships between Dealer and others are intended only to protect the good name, good will and reputation of Company, to assure Company that its products will be made available to the public and that service facilities will be made available to users of its products, and to assure or inform Company of the financial stability of Dealer. This agreement contemplates that Dealer shall acquire Dealer's own place or places of business, facilities and equipment in accordance with Dealer's own discretion and shall purchase COMPANY PRODUCTS as Dealer's own and resell them to customers selected by Dealer, all in conformity with the requirements and limitations herein specified but otherwise in Dealer's own discretion. Except as herein specified, nothing herein contained shall impose any liability on Company for any expenditure made or incurred by Dealer in preparation for performance or in performance of Dealer's obligations under this agreement.

NOTICES

29. Any notice required or permitted by this agreement, or given in connection herewith, shall be in writing and may be by personal delivery or by first-class registered mail, postage prepaid. Notices to Company shall be delivered to or directed to the District Sales Manager of the area in which Dealer is located; notices to Dealer shall be delivered to any person designated in paragraph D of this agreement as having full managerial authority and responsibility for the operating management of Dealer or directed to Dealer at Dealer's principal place of business as described herein.

**MICHIGAN
AGREEMENT**

30. This agreement has been signed by Dealer and sent to Company's office at Dearborn, Michigan, for final approval and execution, and has been signed there and delivered on behalf of Company. The parties hereto intend this agreement to be executed as a Michigan agreement and to be construed in accordance with the laws of the State of Michigan.

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The CHAIRMAN. Does your contract provide you the power to cancel the dealer's contract at will, with or without cause?

Mr. GOSSETT. It provides that we may cancel on 90 days' notice, and there is no provision—

The CHAIRMAN. On 90 days' notice?

Mr. GOSSETT. On 90 days' notice.

Mr. McCULLOCH. Do you have any group that reviews the exercise of the authority specified in your agreement?

Mr. GOSSETT. We certainly have. That must come to the central office of the company and be reviewed by executives in the central office. We have also offered to our dealers a contract, 5-year contract, terminable only for cause. And in that contract the company's and the dealer's obligations will be spelled out in considerably more detail. The dealer will not be required to do anything to the satisfaction of the factory; he will be required to do something that requires an objective test to his performance.

The CHAIRMAN. Regarding termination, I notice section 17-a of your sales agreement provides:

Termination by either party. This agreement may be terminated any time at the will of either party by notice to the other party, and such termination shall operate to cancel each order for a company product.

Mr. GOSSETT. Yes, Mr. Chairman.

The notice requirement for the manufacturer is 90 days, and that of the dealer, 30 days.

Mr. KEATING. The dealer can cancel, too?

Mr. GOSSETT. On 30 days' notice.

Mr. KEATING. On 30 days' notice, and without showing any cause?

Mr. GOSSETT. Yes.

Mr. CRUMPACKER. That cancels pending orders, too?

Mr. GOSSETT. Yes.

The CHAIRMAN. I note the termination clause was construed by the court in *Bushnick-Decatur Motors, Incorporated v. Ford* (116 Fed. 2d, p. 675) as follows:

With the power of termination, at will, so unmistakably expressed, we certainly cannot assert that a limitation of good faith was anything the parties had in mind. Such a limitation could be read into the agreement as an overruling requirement of public policy. This seems to be an extreme step for any judge to take.

Mr. McCULLOCH. How old is that case?

The CHAIRMAN. 1940.

Mr. GOSSETT. You are familiar with the provisions of our contract, Mr. Chairman, are you, to the effect that if we terminate a dealer we are required to make special provision for liquidating his assets, taking over his rentals, by arranging for the sale of his building, and so on, taking back his inventory?

There is, however, no present requirement that we give cause, but under the new contract which was offered to the dealers by Mr. Henry Ford II, several weeks ago, there would be a requirement that the contract be terminable only for cause.

It would be a 5-year contract.

Mr. SCOTT. Mr. Gossett, on page 13 you refer to a Supreme Court decision to the effect that a recommendation by the manufacturer could constitute coercion on a dealer simply because of the relationship between them. Is it your feeling that this legislation would bar

the company from making recommendations to dealers, or at least tend toward litigation if you made recommendations?

Mr. GOSSETT. We simply point out that the Department of Justice in our case regarding the finance companies took the position, with which we did not agree, that there was no difference between a recommendation and coercion; that in view of the nature of the relationship, if we were permitted to persuade our dealers, we would find a way to coerce them in that process, and we say that if we are now prohibited from doing that as a matter of law, the legislation is not necessary.

But if the legislation creates new law, then it should be made clear that we have a right to exert normal persuasive sales influence upon our dealers and we are not in violation of the law.

That, as you know, was covered by the Congress in the Taft-Hartley Act. In that act it very carefully said that if such expression, namely, the expression of view, argument, opinion, or dissemination thereof by the employer, whether in writing or otherwise, in that case if such expression contains no threat or reprisal or force or promise of benefit, then it was not coercion, and we think it is simply fair that if we are going to get new law here, we think the present law prevents us from coercing our dealers but if we are going to get new law, then of course the law should say what constitutes or what does not constitute coercion, so that we can operate, because there are various opinions about what constitutes coercion.

Mr. SCOTT. You want it spelled out?

Mr. GOSSETT. We have had some very curious charges of coercion by Government departments and others.

Mr. SCOTT. You think it should be spelled out in the act if there is to be an act?

Mr. GOSSETT. Some exception; yes, sir.

Mr. SCOTT. And you also make the point that there should be some obligations of good faith running to the dealer as well as to the manufacturer so that you will have an equality of burden so far as the act is concerned?

Mr. GOSSETT. Indeed we do.

Mr. SCOTT. Some responsibility on the dealer, also?

Mr. GOSSETT. Indeed we do.

The CHAIRMAN. Mr. Gossett, I think Ford Motor Co. is to be complimented on these projected changes in your franchises. They probably were undertaken because of the introduction and the hearings on these bills, but you have started to make these changes.

You also have the power to unmake these changes; do you not?

Mr. GOSSETT. Yes, Mr. Chairman. We have the power to unmake them, but I think it has been pointed out that as a matter of tradition and history in the business, once concessions, substantial concessions, are made to the dealers, they are not withdrawn.

The CHAIRMAN. Then again the work that you are doing by way of improving these contracts does not necessarily mean other companies are doing likewise?

When we have a bill that would involve good faith on both sides, which is really what you are suggesting, then no company could do otherwise than provide for good faith in their dealings with their dealers.

Mr. GOSSETT. Mr. Chairman, I think you have ignored or lost sight of one consideration.

General Motors has already changed their agreements to this effect. We are changing ours. There is a certain amount of competition for dealers in this country, and if one company changes its agreements, the others must change them to be competitive, and as a matter of practice once a concession is made, the dealer continues to have that concession, and I think the risks of our withdrawing substantial concessions such as this are nil. The question that is before the committee, and it is a serious question, is whether you should launch into serious legislation here, that would change the law.

I know no counterpart of this legislation. It has been said by Senator O'Mahoney and others that this legislation would simply give to the dealers rights that others have to sue in the Federal courts.

Well, that is not the effect of this law.

Mr. KEATING. That statement was made to me by a dealer and a man of highest standing and integrity before I knew anything about this legislation. His statement was that this gave to automobile dealers the same rights to sue in court which other people now had and which were denied to them. It was a surprise to me that there was some respect in which automobile dealers did not have rights which others have. He is an official in the association, and I wanted to get that straight in my mind. I wish you would address yourself to that.

Mr. GOSSETT. That is a misguided statement, sir. There is no counterpart of this legislation in American jurisprudence in my opinion. Now let me give you a hypothetical case.

Suppose you rented your house for a year and went away and made a lease, came back to get the house back, or suppose you hired an advertising counsel or a legal firm for 5 years, and then at the end of the period you said, "Well, now you have done your best and we like your attitude, but you have not done the job so we want to get rid of you," and he says to you, "I am sorry, we are going to have to submit that to a jury, because I want to test whether you have preserved all the equities that have arisen here during that 5-year period, I want to test whether you have been fair to us."

"We want to test the whole relationship and we will put that to a jury, and I will decide where the jury comes from. It will come from my community."

Mr. Chairman and Mr. Keating, there is no counterpart of this legislation in the history of this country.

If this legislation goes into effect, it is brand new law and it will change considerably, perhaps over a period of time but nevertheless inevitably, the whole concept of the American way of doing business, because you won't be able to get rid of anybody you have hired without putting the matter to a jury and have the jury determine whether the equities have been preserved in failing to renew the relationship that has existed for X years.

The CHAIRMAN. Of course we are changing the act to meet some of those objections, but the problem of a new type of legislation has often confronted Congress and we have always taken the step where it is necessary. Time marches on.

Mr. GOSSETT. I think you should take steps where necessary.

The CHAIRMAN. There cannot be applied to the atomic age a horse and buggy technique. Conditions have changed which may require Congress to step in.

Mr. GOSSETT. Mr. Chairman, if this legislation simply said that in the case of any contractual relationship either party to the relationship could sue in court for violation of the contract, it is one thing.

But this says, and you have not changed it in my opinion by eliminating section 2, this says that in case of failure to renew in the course of performance of the contract one party can take into court and try before a jury the question based upon vague language about fairness and equity. It gives the jury a license to use its imagination.

The CHAIRMAN. Under the court's instruction?

Mr. GOSSETT. Yes; but what does the court base instruction on?

It is a question of fact, a question of fact whether the equities of the relationship are being preserved.

The CHAIRMAN. We have had language of that sort in many statutes.

Mr. GOSSETT. I wish you would show them to me, sir.

The CHAIRMAN. The law has developed on a case-by-case basis containing the statutes involved.

Mr. GOSSETT. I wish you would show me those statutes.

The CHAIRMAN. In the Defense Production Act we had language just as vague and in the case by case process, there was a development as to what these words mean. I might say this, Mr. Gossett, on the question of whether or not motorcar manufacturers have always continued the advantages given to dealers, Mr. Charles M. Hewitt, Jr., assistant professor of business law, Indiana University, testified before this committee on July 2.

He addressed himself to the argument that the bill is no longer needed because of recent franchise reforms.

He stated:

After 1920 General Motor dealers had a franchise of indefinite duration. In the 1940's a 1-year franchise was substituted. In the 1920's GM franchises had terms giving used-car-scraping benefits to their dealers.

These prices were dropped in the 1930's.

These are examples which show that franchises terms have varied in the past. Dealer gains are not always retained.

Mr. GOSSETT. Mr. Chairman, I am familiar with that testimony. I want to observe that Mr. Hewitt had to scrap pretty deep and he came up with very little to show exceptions to the statement that I have made. Those 2 exceptions are not really worthy of mention in 50 years of relationships.

Now if I could just for a moment answer your point on the Defense Production Act, that did not put the matter to a jury and that was a wartime emergency measure.

This is for all time. I want to make an exception of course in a case of an emergency, but I say, and I say it without fear of successful contradiction, that there is no counterpart of this statute on the books today or in the law of this country.

Mr. McCULLOCH. Mr. Chairman, just one moment, and at the risk of probably needless repetition, I cannot help but agree with what you said about the possible similarity in other fields.

I can see the Tenancy Association of American saying that we have grasping landlords and we must have the right to go to court to determine whether or not we are going to be fairly evicted.

Mr. GOSSETT. Exactly.

Mr. McCULLOCH. And I am sure the Insurance Agents Association of America or whatever they are called are going to say "We must have this kind of legislation because we have some hard-driving insurance companies."

Mr. GOSSETT. Exactly, and so on down the line.

Mr. McCULLOCH. "And they are making us work too hard because we are not selling enough life-insurance policies."

Mr. GOSSETT. Our margins are not high enough.

Mr. McCULLOCH. That is the condition with which I think we are confronted, Mr. Chairman and we are only discussing one industry here, but it seems clear to me that we have many similarities in other activities in America. We have to have plenty of time in deciding as a matter of policy that we want to go into this sort of thing in all of our economic life in America.

Mr. GOSSETT. I could not agree with you more, and the effect would be insidious but it would be inevitable, that when you get to a point where you cannot get rid of inefficient people, even if they are acting in good faith—now you may have a dealer who is doing his best, coming down at 8 o'clock in the morning and he leaves at 11 at night and he has all the facilities that you require him to have or that he must have under his contract, but he is not doing a good job, and so you try to straighten it out with him.

The first effort is to get the business in shape—and our people are paid on profitability of dealers, not volume—and they try to straighten out a dealer because it is always easier to straighten out a dealer than to grow a new dealer.

If all that fails and you come to the last resort and you have to terminate him, then you are faced with a jury trial in his community as to whether you can do it or not because the question is whether he has acted in good faith and the question is whether you are preserving the equities that have grown up over the years.

I think it is a monstrous law.

The CHAIRMAN. I don't know whether they are equities. I think you have a different situation here. You have this great company called the Ford Motor Co., and this great company called the General Motors Corp. dealing with one individual.

He is in a very poor bargaining position to trade with those huge entities, and the courts have recognized that.

Let me read you from another decision, *Ford Motor Car Company v. Kirkmyer Motor Corporation* (65 Fed. 2d 1001), decided in 1933, where the court stated:

While there is a natural impulse to be impatient with the form of contract which places the comparatively helpless dealer at the mercy of the manufacturer, we cannot make contracts for parties or protect them from provisions of contracts which have been made for themselves.

Dealers doubtless accept these one-sided contracts because they think that the right to deal in the product of the manufacturer even on his terms is valuable to them, but after they have made such contracts relying upon the good faith of the manufacturer for the protection which the contracts do not give, they cannot when they get into trouble expect the courts to place in the contract the protection which they themselves have failed to insert.

And I might add if they tried to insert such terms they would not get the contract.

Mr. GOSSETT. Mr. Chairman, that deals with contract and this statute goes far beyond contracts.

You yourself have said it in your opening and Senator O'Mahoney has said——

The CHAIRMAN. This is concerned with the dealer's contract?

Mr. GOSSETT. Yes, sir; and a law directed to the requirement that the parties follow and comply with the contract and giving them the right to go to court and get a jury trial in the event of failure to comply with the contract is one thing, but a law which says that when the contract terminates you have a right to go to court and have a jury determine whether you should have renewed it because perforce if you don't you violate his equities or you are not fair, is another thing.

And I want to say to you, sir, that I don't think there is any counterpart of it in this country.

Now, if the business of being a dealer is so bad, if it is such a bad business, why do we have more applications than we are able to fill? Why is it that the General Motors dealers averaged 13 percent after taxes in 1955, and why is it that the Ford dealers averaged 16.3 percent after taxes on their investments? That is the way you attract capital, by your——

The CHAIRMAN. What did the Ford Motor Co. average?

Mr. GOSSETT. I don't have the figure here—24 percent.

The CHAIRMAN. Twenty-four percent. Well, we have had an avalanche of inquiries from all over the country from your own dealers asking for legislation.

Mr. GOSSETT. I do not doubt it, Mr. Chairman, and I will say that the dealers, most of them, do not understand the implications of this legislation, and if they did, if they went to their own lawyers, as we have suggested that they do, and had them explain the implications of this legislation, most of them would be against it.

Now, there are some dealers, and a minority of dealers, who want low volume and high profits, and so on. But most dealers want the free-enterprise system, and they want to sink or swim on their merits.

The CHAIRMAN. There was testimony in denial of the desire for high profits and low production. Witnesses right here now representing the National Automobile Dealers Association flatly denied that.

Mr. GOSSETT. Denied what, sir? I do not understand.

The CHAIRMAN. That the dealers want reduced production and higher profits.

Mr. GOSSETT. I agree with that. Most dealers do not. I am talking about a small minority of dealers. Most dealers want to sink or swim on their merits, and most of them are reputable businessmen who have made a big contribution to the effectiveness of the free-enterprise system. And what I am saying is that if they knew the implications of this bill and knew that as a result of this bill you could not get rid of inefficient dealers who were operating in good faith, they would be against it.

Now, if we could talk with every dealer we had, we would like to do it. We have not been able to do that. There has not been time. There were no hearings on this bill in the Senate, and I got word from you, Mr. Chairman, that we were only going to have 1 day's hearings on July 2, and we asked you, and you very kindly extended that date.

The CHAIRMAN. When you made a request——

Mr. GOSSETT. We certainly did.

The CHAIRMAN. We set this date, and I hoped that we would finish today, but I am afraid that we will not finish today.

Mr. GOSSETT. I hope that you do not finish this session, Mr. Chairman, because I think you are going to regret this legislation.

I think I can argue against this bill, Mr. Chairman, on its merits.

Mr. SCOTT. Mr. Chairman, Mr. Gossett has mentioned the question of the inefficient dealer. I am thinking of two instances, one where the man is inefficient and another where another situation applies.

If you had a dealer who unfortunately, let us say, was an alcoholic although he did the best he could, and you terminated his dealership, how would that operate under this bill?

Mr. GOSSETT. Well, I think that if we terminated his dealership on the ground that he was inefficient, he would have a right to a jury trial as to whether or not he acted in good faith under the definition in this bill, and the jury would determine whether, in the light of all the circumstances, we were being fair to him and we were acting in a manner calculated to preserve the equities that had grown up over the period of our relationship.

Mr. SCOTT. Suppose you had a very wealthy dealer, one that was interested only in low volume and who did not want to work very hard, and who made all the money he could afford to make in consideration of the tax situation. He is not pushing very hard, but you are persuading him; you are using recommendations and persuasion, and you want more volume which he will not get for you. And so you terminate him. Would that same situation apply here? Could he go to court?

Mr. GOSSETT. I would think so, sir. And I would think the same situation would apply where we did not terminate him, but left him in and put another dealer in.

The CHAIRMAN. I think he could go into court, but he would not have much remedy.

Mr. GOSSETT. That is a question of fact for a jury to decide, sir, in his community. And the dealers stand pretty well in their communities, and justifiably.

The CHAIRMAN. You forget that there is a judge that presides, too.

Mr. GOSSETT. But the judge cannot decide the facts in a situation like this. I would think—I hope they will interpret the bill that way, but I would not think so.

The CHAIRMAN. Have you no faith in the jury system?

Mr. GOSSETT. Sir, I have the same faith in the jury system that you, as a distinguished and experienced lawyer, have. [Laughter.]

The CHAIRMAN. We see to it that the judges give proper instructions. And in the Federal Courts, you know that the judges have an extensive degree of power in that regard.

Mr. GOSSETT. I would hope that in the case cited, the judge would instruct the jury, but I would not have confidence in it, and I would like to have that cleared up as a matter of legislative interpretation. Certainly the bill does not clear it up.

Mr. QUIGLEY. Mr. Chairman—

The CHAIRMAN. It will take time for a legislative interpretation by the courts of the words that we announce by statute to develop.

Mr. GOSSETT. Mr. Chairman, how would you like to have a jury decide how to run your clients' business?

The CHAIRMAN. That is not the case here.

Mr. GOSSETT. I think, sir, it is, because whenever we do anything that the jury thinks is coercive or unfair, whether it involves the amount of concession we give, price, or anything that involves our business, he has a right under this to go to court and have the jury decided the question.

Mr. QUIGLEY. Mr. Gossett, what question? That is what I want.

Mr. GOSSETT. The question of—

Mr. QUIGLEY. You keep saying it is his good faith.

Mr. GOSSETT. The question of whether we are acting in good faith.

Mr. QUIGLEY. Isn't that the question—

Mr. GOSSETT. Yes, sir.

Mr. QUIGLEY (continuing). Whether the Ford Motor Co. or General Motors acted in good faith?

Mr. GOSSETT. Exactly.

Mr. QUIGLEY. If your particular dealer was the best-faith guy in the world, but was an alcoholic or incompetent, you certainly could, in good faith, cancel it, regardless of what his good intentions might be.

Mr. GOSSETT. The question would be for the jury, and I would hope that in such a case the jury would say, "Well, he is a stumblebum, he has been no good, and they had a right to cancel him, and they are acting in good faith."

But that is a case on one side of the line, and I want to tell you there are many cases on the other side of the line.

Mr. SCOTT. The other illustration is much closer to the line, where you have a man who doesn't really need the money and doesn't want to sell very hard, and he comes to court, and he says, "I sold automobiles, Fords, to everyone who came in and wanted one." But he made no effort to sell, he simply sat there and waited for them to come and buy. He could make his case by saying, "If anybody wanted a car, I sold it to them."

Mr. GOSSETT. And he could call in innumerable customers to testify that he had been a fine dealer, given good service, and charged fair prices, and so on.

The CHAIRMAN. You could appoint another dealer in such a case, if you felt your cars weren't being sold properly.

Mr. SCOTT. Could you appoint a stimulator dealer?

Mr. GOSSETT. It wouldn't be a stimulator dealer, it would be another dealer to develop the territory.

The CHAIRMAN. Under the amendment, you would have the right to appoint another dealer.

Mr. GOSSETT. Would you point that out to me, sir?

The CHAIRMAN. In the amendment that we are considering, if a dealer is not doing his job, you have a right to appoint another dealer; there is nothing in the bill to prevent it.

Mr. GOSSETT. Could you give me the language on that?

Mr. MALETZ. One amendment the committee is considering calls for striking out all after the word "intimidation."

Mr. GOSSETT. I know that.

Mr. MALETZ. And one of the reasons why the committee is considering that change is to make it abundantly clear that the manufacturer is not precluded in any way, shape, or form, from setting up another dealer in whatever area the manufacturer desires.

The CHAIRMAN. Not only that, but in the report of this bill, if the bill is reported out, that issue will be nailed down.

Mr. GOSSETT. There are two answers. With the greatest respect, Mr. Maletz, I don't think that the deletion of that language will have that effect, because you would still have the question when you put in another dealer—and that may or may not be the economic thing to do, it may be preferable to have one dealer in that area—but suppose you put in another dealer, then the question would come up as to whether the dealer was a stimulator dealer.

You heard the testimony of Dr. Kirks, of NADA, and he said that at that point the jury would have to decide whether it really was a stimulator dealer, and also would have to decide, in the light of all the circumstances, whether the installation of an additional dealer was acting in good faith.

Now, let's assume Dr. Kirks says that the new dealer had a smaller investment in his business than the old dealer and he sold more cars, then he said, clearly, that would not be, the manufacturer would not be acting in good faith. Now, if that is so, what do you do to the dealer system of this country, if the new dealer must invest as much or more money as the old dealer to sell as many cars, what is going to happen to the automobile industry in this country? What will happen to its stockholders, what will happen to the public?

Mr. MALETZ. Isn't it correct, Mr. Gossett, that if a manufacturer establishes a new dealership in a particular area for the purpose of putting an existing dealer out of business, such action might be a violation of the Sherman Act or the Federal Trade Commission Act?

Mr. GOSSETT. Certainly. And this act would go further. This act would say, Mr. Maletz, that in such a case the jury would decide whether the new dealer was a stimulator dealer or whether he was really put in because of need.

Mr. MALETZ. Why shouldn't the jury make that determination, Mr. Gossett?

Mr. GOSSETT. There are situations where the jury should make that determination. The question is the definition under which they make that determination. And the definition here, we think, is one to which no corporation, no party should be subjected, because it is vague, it is indefinite, it talks about good faith, equity, fairness and justice, and so forth.

The CHAIRMAN. In order to protect your company and similar companies, we welcome from you any suggestions as to language so that you would not be hampered in your appointment of new dealers.

Mr. GOSSETT. Mr. Chairman, you said that if we were prevented by this statute from appointing new dealers—I think you said getting rid of an inefficient dealer—it would be a barbarous law, I think it would be barbarous. I think in many cases—let's assume, Mr. Chairman, that this dealer about which we have been talking here, suppose we went to the end of the franchise and we tried to straighten him out and get him back on his feet and tried to get him to go to work. Let's assume that he was being outsold 3 to 1 by the competition, with a car that was no better than ours.

Now, then, we go to the end of the franchise period, and we say, "The franchise is terminated, and we are going to replace you." Then he has a right to go to the jury and have the jury decide whether that is fair to him and equitable in the light of all the past circumstances.

The CHAIRMAN. I would say that the statute would be barbarous if you couldn't get rid of an inefficient dealer.

Mr. GOSSETT. You used the word "coercion." You get a new dealer in the circumstances stated, and the old dealer says, "They are trying to coerce me, I am selling all the cars I can." We have a dealer in Chicago that came before the Monroney committee to testify, and he testified that he was coerced and intimidated and terminated by the Ford Motor Co. unjustifiably. Well, the facts were diametrically opposite. He said that he didn't get his investment back, and we proved that he got his investment, plus \$50,000; we proved that the new dealer who came in outsold him 3 to 1.

The CHAIRMAN. In that case, you wouldn't suffer, you would have to bring that evidence to bear upon the case.

Mr. GOSSETT. We would not suffer if the jury decided our way. And there are cases such as that that should be put before a jury. And if we have a new contract, and we say we will not terminate a dealer except for cause, then that will be put before the jury, that particular case.

Now, let's assume we come to the end of the contract—

The CHAIRMAN. If the jury said that that was coercion under those circumstances, the judge could set the verdict aside as being contrary to the weight of the evidence. You have that in your negligence cases all the time. You probably are subject to an avalanche of negligence cases, as are companies that are self-insured, and they have that difficulty all the time.

Mr. GOSSETT. You can't set the verdict aside if there is substantial evidence in support of the verdict. And there will be substantial evidence, because the dealer would produce it.

The CHAIRMAN. You are arguing against the jury system.

Mr. GOSSETT. I am not, sir. I said, and I want to say it again, that if you have a contract with a man and it is terminable for cause, and he has violated that contract, or hasn't performed as required by the contract, we ought to have to go before the jury if we terminate him and he denies that we terminated him for cause.

But, I am saying that this goes much further than that.

Mr. McCULLOCH. A dealer would have that right regardless of legislation.

Mr. KEATING. Not under the present contract.

Mr. McCULLOCH. But under the 5-year contract you are talking about, that would be fundamental law, it would seem to me, that he could test that in court.

Mr. GOSSETT. Yes, sir.

Mr. McCULLOCH. This is not too important, but if you have the facts, or they are not too difficult to get, I would like to know how many Ford dealers have failed or gone bankrupt since the end of the war.

Mr. GOSSETT. A negligible number. We can get that information for you.

Mr. McCULLOCH. If it isn't too much trouble, I would just like to have it for my own satisfaction.

Mr. GOSSETT. We would be glad to. It has been a negligible number of Ford dealers. And as a matter of fact, as I pointed out before the Monroney committee, until November of last year our dealers were short of cars in most of the postwar period, even as late as November we were receiving letters from our dealers criticizing us for not producing enough cars, and they have had a maximum of 20

days' cars, as opposed to 30, and they didn't have enough cars to show all body styles and colors.

(Mr. Gossett subsequently supplied the following:)

FAILURE AND BANKRUPTCY OF FORD MOTOR CO. DEALERS

On page 598 of the record, Congressman McCulloch requested that the committee be furnished with the number of Ford Motor Co. dealers who have failed or gone bankrupt since the end of the war. Our records show that during the entire 10-year period, 1946 through 1955, 32 Ford car dealers left the business because they were unable to operate profitably and 96 left because of inadequate finances or other financial difficulties. In the same 10-year period, 57 Lincoln and Mercury dealers left the business because of inability to operate profitably, 80 because of inadequate finances or other financial difficulties, 1 went into receivership and 1 went into bankruptcy.

DEALER TERMINATIONS FOR UNSATISFACTORY REPRESENTATION

Ford Motor Co. records show that during the 10-year period, 1946 through 1955, the number of dealers holding franchises for one or more lines of cars manufactured by the company averaged 7,553 per year. The total number of terminations for unsatisfactory representation during this 10-year period was 224. Thus, there was an average of slightly more than 22 terminations, or less than one-third of 1 percent of the dealer body, per year.

PROVISIONS MADE FOR TERMINATED DEALERS

On pages 573 and 584 of the record, reference was made to two cases (decided in 1933 and 1940) involving Ford Motor Co. in which the courts commented upon the then form of sales agreement used by the company. The form of sales agreement then in use provided a very short notice period in the case of a termination initiated by the company, and very few benefits were granted to dealers so terminated. In contrast, under the company's present form of sales agreement terminated dealers are accorded many substantial benefits. These are all set forth in paragraphs 20 through 21 (e) of the form of Ford sales agreement reproduced and inserted in the record following page 570. They include requirements that the company buy back the dealer's cars, parts, special tools and signs, and assist the dealer with respect to his premises in the event that he cannot otherwise use or make disposition of them.

Mr. Henry Ford II, in a statement before the Subcommittee on Automobile Marketing Practices of the United States Senate Interstate and Foreign Commerce Committee at Washington, D. C., Monday, March 12, 1956, described in detail the procedures followed by our company in terminating dealer sales agreements. A copy of Mr. Ford's statement is attached. The company's procedures assure that a thorough consideration at all levels in the company is given to the question of termination and that all feasible steps have been taken to rehabilitate a dealer before his termination is finally approved.

These procedures have now been supplemented by the establishment of a new dealer policy board to which Mr. Gossett referred in his statement (p. 641 of the record). No dealer sales agreement is terminated by the company except upon the prior approval of the board after full consideration of all the circumstances, including a meeting with the dealer if he requests it.

RETURN ON DEALER'S INVESTMENT

The question of the profits of automobile dealers, returns on their sales and investments and the comparison of their returns on sales and investments with those of the manufacturers was discussed on pages 586, 604, and 609, et seq., of the record. The discussions suggested that some clarification might be desirable.

In the 10-year period, 1946 through 1955, the total profits of Ford Motor Co. dealers compared very favorably with those of the company. This was pointed out by Henry Ford II on page 7 of his statement, mentioned above. He said:

"For this 10-year period, Ford Motor Co. made total profits, before taxes, of \$3,728 million of which \$1,126 million was ploughed back into the business and \$2,067 million was paid in Federal taxes.

"Ford Motor Co. dealers, during this same period, made total profits, before taxes of \$2,565 million, with approximately one-third of this amount paid in Federal taxes."

Ford Motor Co. dealers have made substantial net profits after taxes, as a percentage of return on net worth, even though their profits, as a percentage of return on sales, have been relatively low. In 1954, they averaged 11.27 percent

of profit to net worth and 1.43 percent on sales. In 1955, they averaged 16.28 percent of profit to net worth and 1.73 percent on sales. They were able to make these profits on net worth, with relatively low percentages of profits to sales, because of their high rate of inventory turn-over and relatively low net worth. A comparison of the performance in this regard of Ford Motor Co. dealers for the years 1954 and 1955 with dealers in other retail lines is set forth on page 16 of the statement by Lewis D. Crusoe, executive vice president, Car and Truck Divisions, Ford Motor Co., before the Subcommittee on Automobile Marketing Practices of the United States Senate Interstate and Foreign Commerce Committee at Washington, D. C., Monday, March 12, 1956, a copy of which is attached.

The profits of automobile dealers as a percentage of return on sales should not be compared with the profits of the manufacturers as a percent of their sales because the manufacturers' investments are much larger than those of the dealers in comparison to sales and their rates of inventory turnover are much lower than those of the dealers. The only proper basis for comparison between the profits of the manufacturers and the dealers is their respective returns as a percentage of net worth. This was brought out in the following colloquy on pages 2375-2376 of the record of the hearing before the Subcommittee on Automobile Marketing Practices of the Committee on Interstate and Foreign Commerce of the United States Senate on June 12, 1956:

"Senator MONROE. You state in your statement that there would be no reason, if the factory had the buy-back provision—you say on page 12: 'One thing is clear: If legislation were enacted there would be no logical basis for according to dealers the wholesale price levels that they now enjoy. With reduced risks there would be little justification for the existing price structure. Indeed, under such circumstances, there might be little need for authorized dealers, as they are now constituted.'

"I was interested in our testimony where the percentage of profit per unit by the Ford Motor Co. was 17.3 percent per car, before taxes, and on the dealers was 1.73 of 1 percent per car, just one-tenth of the profit per car that the factory itself realizes, and the idea that some additional burden might be placed on the factory with its 10 times the profit per car before taxes as the dealer enjoys, it would seem to me that the threat of reducing the dealer's percentage of profit would hardly be justified by last year's figures. This year's figures as you know is even worse. The last dealer figure we had was eight-tenths of 1 percent.

"Mr. McNAMARA. May I comment on that, Mr. Chairman? I believe that the force which attracts capital into a business venture is the ratio of the profits to the capital at risk, not the ratio of profits to the volume of sales. Now if my memory serves me correct, in the paragraphs following the testimony which you just quoted relating to percent of profits from sales you will find a statement relating profits to investment, which shows that the rate of profit to investment on the part of the dealers is approximately the same as the rate of profit to investment on the part of Ford Motor Co., in that particular period you quote. I have forgotten the exact figures, but I recall we discussed them at the time. I think it shows therefore, that a transfer of investment, hence a transfer of risk, between the parties is bound to lead to a redistribution of the profits involved, and that is substantially what it says at the top of page 12."

NEW-CAR BOOTLEGGING—CAR FORCING NOT THE CAUSE

The subject of new-car bootlegging was discussed on pages 629, et seq.; 633-636; and 682 of the record. This discussion suggests that there may be some confusion in the minds of the committee members as to the reasons for the practice and its effects upon the public, the dealers, and the manufacturers. A detailed discussion of new-car bootlegging is contained on pages 8-14 of Mr. Crusoe's statement referred to above. This discussion reveals, among other things, that new-car bootlegging occurs when car dealers' stocks are low as well as when they are high and, therefore, that bootlegging bears little or no relation to alleged "car forcing," at least not in the case of Ford cars.

FORD MOTOR CO. SALES AGREEMENTS SINCE WORLD WAR II

Representative McCulloch requested, on page 571 of the record, that the committee be furnished with copies of the forms of sales agreements used by Ford Motor Co. since World War II. One set of these forms is attached to the original of this memorandum. Study of these forms quickly will reveal that substantially all of the changes made have been in favor of the dealers.

a statement...

by Henry Ford II, President of Ford Motor Company, before the Subcommittee on Automobile Marketing Practices of the U. S. Senate Interstate and Foreign Commerce Committee at Washington, D. C., Monday, March 12, 1956.

***Henry Ford II,
President,
Ford Motor Company***



On Monday, March 12, 1956, Henry Ford II, President of Ford Motor Company, appeared before the Subcommittee on Automobile Marketing Practices of the U. S. Senate Interstate and Foreign Commerce Committee at Washington, D. C. The full text of his statement follows:

I appreciate this opportunity to appear today to explain what Ford Motor Company has been doing to meet the problems you have been studying.

I should like to begin by identifying those of my colleagues who have accompanied me here today.

Lewis D. Crusoe, a director of our company and executive vice president in charge of car and truck divisions; William T. Gossett, director, vice president and general counsel; T. O. Yntema, director

and vice president—finance; Robert S. McNamara, vice president and general manager of the Ford Division; F. C. Reith, vice president and general manager of the Mercury Division; and Ben D. Mills, vice president and general manager of the Lincoln Division.

With myself, these men are among those directly responsible for the policies of our company and for the application of those policies in so far as the 9,000 members of our dealer organization may be concerned.

For purposes of clarity, we have broken down the material to be presented to you into three major parts: dealer relations, destination and delivery charges, and new car bootlegging.

In prepared statements, together with certain appended exhibits, Mr. Crusoe will handle the subjects of destination and delivery charges and new car bootlegging, and I will deal primarily with our policies as they bear directly on the matter of dealer relations. I shall also take advantage of the opportunity offered here to make some general observations on subjects which have been before you since the start of these hearings. Messrs. Gossett, Yntema, McNamara, Reith and Mills are available to enlarge on and develop the material presented by Mr. Crusoe and myself where that may be helpful to you and, with us, to answer whatever questions we can that you may wish to ask.

A fourth topic in which you have expressed an interest—automobile financing—we will not cover in detail at this time. We do not operate or have an interest in any automobile financing or credit company. We have no plans to start such a company. Our dealers make their own credit arrangements from among the many sources available to them.



Before proceeding with my part in our presentation on the specific subjects I have mentioned previously—dealer relations, destination and delivery charges and new car bootlegging—I should like to take a few moments to discuss a side issue that has found its way into these hearings, because it concerns me personally as well as Ford Motor Company.

I did not—nor did anyone else in Ford Motor Company, to my knowledge—exert any pressure, directly or indirectly, on our

dealers to support either of the Presidential candidates in the last election.

As a matter of deep personal conviction, I favored the election of General Eisenhower in 1952. The political preference, however, of any other official, employee or dealer of Ford Motor Company was then, is now and will be in the future a matter for his own decision.

My assistant, Allen W. Merrell, who is not an officer or general executive of the company, has been active as a private citizen in Republican Party affairs for a number of years. Since 1948, he has been a member of the Wayne County, Michigan, Republican Finance Committee. In 1952, Mr. Merrell was chosen as a Delegate-at-Large to the Republican National Convention in Chicago. Shortly thereafter, he became a member of the Republican National Finance Committee.

Sometime in the late summer of 1952, Mr. Merrell came to me with a suggestion that he call together a selected group of Ford dealers. He said that his purpose was to ask the members of the group—all strong Eisenhower supporters—to solicit automobile dealers. The solicitation was to be carried out by the dealers themselves.

I gave my approval to the suggestion, with three major provisions. I particularly specified that no pressure of any kind be exerted on any dealer or group of dealers; that none of the company's sales representatives or any other company personnel take part in the solicitation of campaign funds; and that no company funds be expended for anything in carrying out the program.

It was about this time that I left the country on a business trip to Europe. I was away from September 3, 1952, until October 21 of that year. The project was carried out during my absence.

When this subject made its appearance at one of this Committee's hearings a short while ago, I questioned Mr. Merrell on the matter. He assured me: that any activities of his in connection with the dealer fund-raising effort for the Eisenhower campaign were carried out exactly as I had requested; that he did hold two meetings with dealer groups; that he did so as a private citizen and as a member of the Republican National Finance Committee.

He assured me also that to the best of his knowledge: no other company personnel took any part in the direct solicitation of funds; and that no pressure was brought to bear on any dealer or group of dealers.

Although Mr. Merrell, at or near the conclusion of the project, did assure me that it had been completed, I have never known which of our dealers made contributions and which did not. Nor do I know what amounts were contributed. I have heard that many of our dealers contributed and that the total amount was substantial. I also know that a large group of our dealers are staunch Democrats and I have heard that they contributed generously to the campaigns of Democrat candidates.

Ford Motor Company is a business corporation and not a political institution. Even if it were legal to do so, the company would not support, financially or otherwise, the candidacy of any person for political office. But what any employee of the company does in his own behalf and acting as a private citizen is another matter and one of his own concern.

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May I state at the outset that the matters which are under consideration by your Subcommittee are of the greatest concern to Ford Motor Company. As we will show in the course of our testimony, Ford Motor Company has always recognized that its very future depended on a strong and profitable dealer organization.

We are proud to be able to say that we have continually led our industry in the development of policies and programs designed to create and maintain a healthy dealer structure. This is true today as it has been in the past—and we are determined to continue improving and strengthening our dealer organization in the future.

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During the course of this Committee's hearings, it has been clear that at least two of the parties in interest—the automobile dealer and the automobile manufacturer—would have ample opportunity to have their views incorporated in the record of these proceedings.

It seems to me important somewhere along the line to consider the interests, if not the expressed views, of other groups who have very substantial stakes in what happens as a result of this sub-committee's inquiry and recommendations, if any, for legislative action.

There are, for instance, the nearly 1,000,000 employees of the automotive industry and the 670,000 employees of some 40,000 dealers. There are thousands of small and large business firms that supply the automobile industry—and their employees. There are the hundreds of thousands of stockholders of the various corporations. And, most significant of all, there is the American consumer. He has the most to gain or lose.

The consumer, who pays the bills, may not be able to avail himself of the same opportunity to appear here and state his case. The consumer is not organized into a corporation or a trade association. Although it may not be possible to hear from the consumer in person, it seems to me that it is clearly the responsibility of all of us to represent his interests.

The manufacturer depends on the consumer, and so does the dealer. We know him to be the best judge of the products we manufacture and sell. He determines price levels and sets market values by his willingness to pay more or his determination to pay less for a particular car or truck.

It is his money we use for expansion and for pay roll and for experimentation. He employs engineers, stylists and assembly line workers every time he buys a new car, because the money he spends is used to pay the wages and the salaries of these people.

The consumer has tremendous power. There is no appeal from his judgment. He makes his own rules and enacts many unwritten—but binding—laws of our system of free competitive enterprise.

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I have emphasized the role we know the consumer plays in our business, because ten years ago at Ford Motor Company, we became even more acutely aware of his importance than, perhaps, we ever had been before.

At that time, the company was not making a profit, was not even close to the break-even point. We were, in fact, losing astonishing amounts of money, month by month.

Responsible for these hard, cold and somewhat discouraging facts of life at Ford Motor Company in 1945 were these additional facts: we were not manufacturing a product that satisfied the customer's growing needs and changing tastes; we were not equipped, man-or-machine-wise, to do so; we had no long-range plans, even with the right product, to produce that product in sufficient quantity to meet the great expansion of the whole American economy that was then beginning to blossom forth across the country. Spring was bursting out all over and we, at Ford Motor Company, were frost-bitten in the winter of our unpreparedness.

We started the reorganization job that had to be done ten years ago at headquarters in Dearborn with the planning of new plants and the rehabilitation of old ones, the engineering and styling of new products, the strengthening and rebuilding of our organization all along the line, from top to bottom.

With the job started—and just barely started, at that—my associates and I went out across the country to see and to talk with the most valuable single asset we did have: an experienced, hard-working, loyal and extremely patient dealer organization.

We told them about our plans. They liked what they heard. They believed us. And on the strength of our belief in them, we returned to Detroit and proceeded about the business of carrying out a vast expansion program that could keep pace with the tremendous growth we were certain was ahead for America.

In the course of that program and within a period of ten years, we expended some \$1,678,000,000 in modernization, expansion and replacement of facilities alone, exclusive of special tools costing over one-half billion dollars. Our dealers stepped up to the job magnificently. They expanded sales and service facilities, trained and added new sales and service personnel, adopted sounder merchandising and management practices.

The ten-year results tell the rest of the story: Ford Motor Company employment up 80,070 or 79 per cent; car and truck

sales up 1,960,000 units or 300 per cent; company payrolls up \$790,000,000 or 240 per cent; net value of the company's property, plant and equipment up \$875,000,000 or 266 per cent; passenger car and truck sales up from 21.2 per cent of the industry in 1946 to 28.5 per cent of the industry in 1955.

For this ten-year period, Ford Motor Company made total profits, before taxes, of \$3,728,000,000, of which \$1,126,000,000 was ploughed back into the business and \$2,067,000,000 was paid in federal taxes.

Ford Motor Company dealers, during this same period, made total profits, before taxes, of \$2,565,000,000, with approximately one-third of this amount paid in federal taxes.

My reason for dealing in some detail with this portion of our company's history is because I believe these facts and figures are important indicators of the kind of a relationship that must have existed between company and dealer during that period to produce such results.

The company-dealer relationship may, it seems to me, be compared at least in some of its aspects with the relationship between husband and wife. There are bound to be disagreements. There must be the necessary amount of give and take, the required number of compromises. Each must share in the benefits of the alliance. Whether the marriage is a happy one—or a miserable failure—can best be measured by the results produced. And the results measured should not be those of a week or a month or even a year. On that basis, a great deal of proof would be required to upset my belief that the marriage between our company and its dealers had been a happy and successful one, measured by the results of the past ten years.

Whether it is a mild disagreement or a violent quarrel that occurs between the parties in any marriage—corporate or otherwise—there is always a cause for the rift. The very nature of our business makes it possible—if not certain—that such causes or reasons for trouble will occur more frequently than, perhaps, would be the case in other businesses.

This business of manufacturing automotive vehicles is exacting, complex, hazardous and exciting. We must project our programs

far in advance, attempting to visualize three to five years ahead the vehicles we will produce and the potential market for them at the time of their introduction. And we must commit ourselves far in advance for the new facilities, tools and dies required for production.

If the products that we have designed do not meet with public acceptance, they cannot be basically changed for at least two years. During that period, we and our dealers and suppliers could sustain huge losses. Ford Motor Company and others have had this experience in the past.

The conduct of our business involves split-second timing of our operations, not only of our own production facilities, but of those of thousands of suppliers. This is complicated by the fact that we do not supply a standard unit, but several complete lines of different units with thousands of individual variations in color, design and in special-equipment preferences. We must have vehicles in the hands of our far-flung dealer organization at a specific time and continue to supply each dealer upon his order throughout the year.

To be able to supply our dealers, we maintain a widely dispersed assembly system. We place orders with our suppliers many months in advance of production of the first car so that they will have the tooling, facilities, manpower and know-how necessary to do the job. Later, we set our production schedules, generally for five months ahead, only one month of which is covered by dealer orders, the other four months being at the company's risk. Then we tell our thousands of suppliers—some of which are operating divisions of the company—the number of parts we will need to meet our schedules for that period. This process of setting and adjusting schedules and of notifying suppliers is repeated each month. All of this planning is necessary if the quantity, type and quality of components are to reach the assembly line at the precise moment when the vehicle required is being assembled.

In the process of planning—and in production—there is a constant battle to bring down costs. This is a difficult matter for, obviously, cost is directly related to the volume of production; and volume in turn is dependent to a large extent upon the number of cars we can sell. Thus, in setting the price on the first car that

comes down the production line, we must base that price upon an assumed volume of sales. In other words, we price, let us say, the *millionth* car and that is the price at which we sell the *first* car. Our price, then, is determined by a volume which may or may not be realized. This is where the dealers come in.

Since the manufacturer is so dependent upon the efforts of the local dealer, the selection of the dealer and the dealer's success in his area of operation are matters of great importance. The manufacturer must not only be concerned with the over-all efforts of the dealer but also with the dealer's sales and service personnel and equipment, his managerial and merchandising methods, his physical facilities and his standing as a citizen in his community.

If the dealer fails in his job, there are repercussions and reverberations all the way along the line. The failure is felt not only in the profits of the manufacturer, but in the prosperity of the supplier, the paycheck of the employee, the dividend of the stockholder—and the amount of money available to make next year's models better cars and trucks for the customer.

Thus the many complexities of our manufacturing operations, the basic interdependency between dealer and company, the interests of the employee, the day-to-day well-being of the supplier, the hopes of the stockholder and the needs and demands of the customer are all interwoven and entwined in the automotive industry in one fabric whose complicated pattern, ever changing, is never quite clear or even easily explainable to the casual observer.

It should be no surprise to anyone that, in such an atmosphere, problems of one kind or another are continually in the process of creation and solution.

That has been precisely the case at Ford Motor Company, particularly during the past ten years. That is the only period of our company's history about which I am qualified to speak from first-hand knowledge. And I would like to make it quite clear at this point that we have never ignored or consciously overlooked, during that time, the causes that might create problems between our dealers and the company.

It has been this company's policy to solve such problems—to

remove the causes of trouble—just as soon as the problem could be diagnosed and a remedy developed.

We know, as I have already indicated, that the strength and prosperity of our dealers is as vital to us as it is to them. We want to do everything we can to fortify that strength and to increase that prosperity.

That is why we at Ford Motor Company spend a considerable amount of both time and money to help our dealers achieve success with training and assistance programs covering all phases of dealership operations. And this is not a policy adopted today or last week.

For example, back in 1945—realizing the importance of clear channels of communication to a company-dealer relationship—we established our Dealer Councils. Since 1950, the members have been elected by the dealers themselves, a practice that is now being adopted by other companies in the industry. For ten years, since their creation, both company and dealers have worked to make them more and more effective, more and more useful to each party concerned. There is a National Dealer Council for each of the car divisions.

Let me tell you, briefly, how it operates at the Ford Division. Members are elected annually by the dealers on a national basis. All of the dealers in each zone, who comprise a zone council, elect two representatives to the district council. The district council, in turn, elects two representatives to the regional council; and each of the regional councils elects representatives to the national council. The two representatives elected at each level are generally a small dealer and a large dealer.

The national council presents to the management of the company the views and recommendations of the dealers. These views and recommendations are first discussed at the zone level, then at the district and regional level, and finally at the national level.

The problems raised at each level are discussed with company representatives. The great majority of dealers' complaints and recommendations are resolved at the zone, district and regional levels. The unresolved questions that are deemed important by the national council are then discussed at length with the management of the car division at the national council meeting.

The plan works and it works well. It will work even better in the future since we now afford our national council an opportunity to discuss any ultimately unresolved questions with staff officers of the company in meetings at which representatives of the car divisions will not be present.

Members of our dealer councils have expressed satisfaction with the operation of the plan on numerous occasions. I know of no instance when the company did not conscientiously and sympathetically deal with all suggestions advanced by the council.

There is no limitation on the subjects for discussion at the council meetings. They embrace every conceivable subject—dealer-company relations, engineering and design, quality, the competitive situation, distribution problems, wholesale prices, and advertising programs, to name a few. Both the dealers and the company recognize the necessity of advancing their common interests, and the discussion proceeds with complete freedom.

To summarize, all dealer council recommendations are given serious consideration. Most of them are adopted. When they are not adopted, a full explanation of the reasons and considerations involved is given to all dealers. The most recent meeting of the National Ford Dealer Council made this report:

"The Ford Dealer Council of 1955-1956 has received excellent cooperation from the Ford Division with the result that our problems have been solved to the mutual satisfaction of both the dealer group and the Ford Division.

"We commend the Ford Division for its maintenance of the Ford Dealer Council. . . ."

Carrying out the same company policy responsible for the creation of our National Dealer Councils, in 1947 we established the Ford Merchandising School. The school is in continuous session in Dearborn, and offers a one-month course designed to train dealers' key employees and managers in the fundamentals of dealership management. The faculty of the school is composed of Ford Division Sales Department Managers and Supervisors. To date, more than 2,000 dealership personnel have been graduated.

Still another example of this policy of company assistance offered to dealers is the service training program of our Ford

Division, established in 1950 and which includes the maintenance of 35 permanent District Service Schools for dealership service personnel.

The profit performance of individual dealers is determined from financial statements that they furnish all divisions each month. This statement is so designed as to permit analysis of the operations of each department of the dealership, and also to permit determination of whether the dealer's problems stem from inadequate cost controls, lack of sales volume, or inefficient management.

When it becomes apparent that one of our dealers is beginning to have trouble, we then offer special assistance to him. In order to do this, we maintain in our Ford and Mercury Divisions, for example, field organizations consisting of more than 150 trained personnel whose specific task is to assist individual dealers and groups of dealers to maintain satisfactory profits. The Ford Division budget for these activities alone in the year 1955 exceeded \$1,200,000.

When individual dealers are found to be experiencing unsatisfactory profit results, they are invited to participate in our Profit Rehabilitation and Cost Control Programs. Whether or not a dealer participates in these programs is entirely a matter of his own choice. The dealers who have participated almost invariably have increased their profit positions substantially—largely through improved cost control and the application of better management techniques. These dealers normally increase the volume of their sales through better organization of their sales efforts, planned solicitation of customers and closer direction of salesmen's activities while substantially decreasing their costs per new unit retailed. All of this results ultimately in a higher net profit to them.

After months of intensive study, the Mercury Division developed a suggested accounting system specifically designed to provide the dealer with financial data on a daily basis that could aid him in the direct management of his business. This new system segregates fixed and variable expenses by type of operation and provides the basis for sound forecasts of the gross profit requirement of each operation.

The monthly reports developed under this system are designed primarily for the dealer's use and all of the information requested

by the factory is available from a copy of the regular dealer monthly statement. This new system illustrates a primary goal of our dealer relations policy. The procedures that we recommend to the dealer are directed toward helping him manage his business and earn a profit.

Still another example of a dealer assistance program—designed to cure problems before they even appear—is a new forward sales planning project instituted among Mercury dealers beginning with the fourth quarter of 1955.

This plan sets up marketing departments in the division's 23 district offices to make a continuing review of market trends in each locality. Zone managers and dealers are provided with the most accurate forecast possible of the probable local demand for specific body styles, colors, and optional equipment. This information, in the short time it has been available, has proved extremely helpful to the dealers in forecasting sales and stock requirements.

Of course, all of these programs I have been describing are entirely voluntary on the part of the dealer. We feel, and most of our dealers agree, that they are of substantial benefit to those who wish to participate. But the final decision is left to the individual dealer.

Before continuing this discussion of dealer-company relations at Ford Motor Company with material that concerns itself primarily with the policy and substance of our dealer franchises, I should like to point out again that this policy of dealer assistance and dealer cooperation at Ford Motor Company is not a matter determined and put into effect within the past few days or weeks.

We have been at the job for some time now and, in the past, have been able to work out our problems to the mutual satisfaction of both the dealers and ourselves. We expect to continue to do so. We further expect, as a result of this ability to get along together—ironing out our difficulties as we go along—to continue to reap material rewards for our efforts comparable to those we both received during the 1946-1955 ten-year period.



As a result of half a century of experience, it has been found that the product of the industry can best be sold through author-

ized dealers. And, so long as authorized dealers are employed, the basic rights of the dealer and of the manufacturer must be governed by agreement.

The Ford Sales Agreement not only provides a legal basis for the relationship between the company and its dealers, it contains provisions deemed necessary to protect the public as well.

At a meeting of the Ford Dealer Council in October of 1950, the chairman indicated the satisfaction of the dealers with the Ford Sales Agreement when he said:

"It is the consensus of the National Dealer Council that we have the best sales agreement in the country today, and it should be a continuing agreement as we presently enjoy."

The agreement was completely revised and greatly improved in 1955. The new agreement contains a number of new provisions that were inserted for the benefit of the dealers. For example, it contains (1) expanded provisions for price protection to include all current model vehicle stocks and factory installed equipment; (2) new provisions for succession of the dealership to certain qualified relatives of the dealer upon the dealer's death or retirement; and (3) greatly improved benefits in the event of termination by the company. Upon termination, the company now is obligated to purchase from the dealer all unused current model vehicles, all unused service parts for the current and next three preceding models, and to negotiate with respect to purchase of all special service tools, and trade-mark signs. In addition, the company is required to make monthly termination payments to the dealer for twelve months in the event that he is unable to utilize his vacated premises immediately.

Many dealers have praised the 1955 Ford Sales Agreement, and we have regarded it as the most liberal and progressive agreement in the industry. That is not to say, though, that it represents the last word or that it could not be improved. Ours is a complex and changing business. As conditions change and as problems arise, we have made in the past, and will make in the future, such adjustments in our agreements and in our relationships with our dealers as may be deemed necessary to protect the interests of the dealers, the public and ourselves.

We have always given careful consideration to suggestions for the improvement of our agreement. Many of the recently added dealer benefits were suggested to us by dealers. A number of other suggestions have been rejected. Among them have been various proposals for territorial security. Such provisions have proved to be unworkable in the past, would be contrary to the public interest, we think, and would create problems under the antitrust laws. The dealers themselves, in answering the questionnaire of this Committee, indicate that they are about evenly split on the question of territorial security.

We believe that our dealers favor our form of continuing agreement over a fixed-period agreement as employed by some of our competitors. Our dealer councils have consistently told us so, and we believe that the published answers to this Committee's dealer questionnaire reflect such a feeling.

The Ford Sales Agreement is a continuing one. It is not for a fixed period of time. It remains in effect until terminated by action of one of the parties. Almost a third of the Ford car dealers have held their franchises for more than 20 years. More than half of them have been with us for more than 10 years. There have been few terminations by the company for unsatisfactory representation in the past few years. For example, in the year 1954 when we had over 6,300 Ford car dealers, we terminated only 8 for unsatisfactory representation. In 1955, we terminated 28 for that reason.

Although the great majority of dealers are experienced and effective businessmen, the manufacturer cannot make exceptions in the standards established for the guidance of the dealers; the standards must be uniform in their application and administration.

I don't want to create the impression that the dealer must conform to rigid standards in the operation of his business. Every dealer's business reflects his personality, his character, and his capabilities; but the manufacturer as well as the dealer is concerned with the results achieved in the dealer's business. This is so because in any community the manufacturer's reputation often is made by the dealer and is reflected in the dealer's conduct. If the dealer engages in false or misleading advertising, if he makes untrue representations to the consumer concerning the product, if he engages in unethical sales practices, or is subject to just criti-

cism for any other reason, his conduct damages not only his own reputation, but the reputation of the manufacturer and the product.

On the other hand, the dealer has a vital and continuing interest in the success of the manufacturer's business. His welfare depends upon the ability of the manufacturer to design a product that will receive public acceptance. If the quality of the manufacturer's product is not good, if it fails in the fulfillment of its warranty obligations, or if its policies in any area are such as to incur public disfavor, the dealer is handicapped and may fail in his business. Thus, if the manufacturer defaults in any material respect, the dealer suffers and must be in a position to make other arrangements, when he deems it to be in his best interest.

We have never regarded the strictly legal relationships with our dealers as of overriding importance in the conduct of their business or ours. As far as I can determine, neither have the vast majority of the dealers. Many of them have told me that they have never referred to the agreement. Far more important are the relationships that arise by reason of the nature of the business and the day-to-day obligation to advance the mutual interests of the parties.

Nevertheless, since the relationship between the parties is essentially a personal one and is grounded upon mutual confidence in and satisfaction with the performance of the other, the agreement must provide for termination by either party. It is assumed that neither party will act capriciously. Each must decide for himself, in the light of all the facts and circumstances, whether the relationship is to continue. Obviously, the nature of the relationship is such that if it becomes unsatisfactory it must be discontinued; neither party can assign his rights to another. If the situation were otherwise, the automobile business would not progress as it has in the past; and a business that does not progress, ultimately will fail.

If both parties continue to perform satisfactorily, the relationship will continue, and the parties will prosper. At Ford Motor Company, in the vast majority of cases, it has continued over the years to the satisfaction and profit of the parties.



I believe that some clarification is needed in the matter of termination of dealer sales agreements. It is manifestly untrue to

suggest that a Ford Motor Company dealer can be terminated in an arbitrary or capricious manner. Termination takes place only after a long, detailed and careful review of the dealer's record.

Let me describe the termination procedure of our Ford Division, as an example.

When a field manager is convinced that a dealer's representation has become so unsatisfactory as to warrant termination, the following review of the dealer's operation takes place at the district level:

- the field manager personally reviews the operations of the dealership with the dealer and files a written report with the district sales office;
- the district sales manager analyzes the dealer's performance record and determines what corrective action should be recommended;
- the assistant district sales manager personally visits the dealer and makes recommendations of a plan for improving the dealership operations;
- periodic visits are made by district personnel to assist the dealer in putting the plan into effect, with reports being made of the dealer's progress; and
- the district sales manager personally visits the dealer if it appears that the dealer is not progressing satisfactorily under the proposals of the plan.

If at this point, the dealer is unable or unwilling to improve his performance, the following review takes place at the regional level:

- the facts are reviewed by the regional sales manager; and
- the regional sales manager personally visits the dealer and endeavors to make further suggestions for rehabilitating the dealer's operations.

If there is still no improvement, the dealer's record receives the following central management review:

- the facts, including a report of the rehabilitation efforts of the district and regional offices, are sent to the general

sales manager of the division,*together with the recommendation of the regional sales manager that the dealer be terminated;

- if the general sales manager concurs, he prepares a report submitted to the company's Merchandising Committee, composed of fifteen principal executives of the company, including the president, chairman of the board, and the general managers of the end product divisions; and
- the Merchandising Committee has final jurisdiction in the matter of terminations.

Such is the carefully prescribed procedure we follow before sending any notice of termination to a dealer. In many cases, the dealer's operations are rehabilitated in the early steps of the procedure. Even if all of the initial rehabilitation steps have failed, the action of the Merchandising Committee, in final review at the highest level of our management, may refuse and have refused to approve termination of the dealer's franchise.

During the 90-day notice of termination period, the company continues to make deliveries to the dealer of products which he orders in the same quantities and manner as though there had been no notice of termination. During this period there is a final opportunity for the dealer to demonstrate that it is to the mutual interest of the company and the dealer that his sales agreement be reinstated.

There are some cases—such as the death of a dealer or the dissolution of a partnership—in which a notice of termination may be sent out immediately. But these cases are limited in number. In practically all cases, the procedure which I have outlined is followed. And that process can take—and has taken—as long as three years to complete.



It is not my intention to attempt to give the members of this Committee the impression that we believe our dealer-company relations at Ford are perfect and that there is no room for improvement. We know they are not perfect. We are fairly certain that such a relationship can never be perfect. But it is our policy always to strive to improve that relationship, to greet changes in it as

conditions and circumstances change, to welcome suggestions that might work toward a better relationship.

We do, however, hold to a strong belief that the over-all policies of the company affecting our relationship with the dealers are right and that they have worked out and will continue to work out to the benefit of each of us.

I would be less than honest were I not quick to admit that in some instances, where the correct implementation of a policy depends upon the action of an individual below the policy-making level, the desired end result can be considerably altered—even, in rare cases, to the point of non-recognition. That can and has happened in our company and we are constantly listening for indications of such a failure in the company's chain of command.



In closing, let me make a few observations, each of them bearing on subjects this Subcommittee has had under consideration.

At Ford Motor Company, as a matter of firm policy:

We are opposed to price-packing and are earnestly seeking ways and means to eliminate it;

We are against false and misleading advertising and will continue, as we have in the past, to stop promptly such advertising by our dealers;

We are against false registrations by our dealers to indicate customer sales that have not been made or for any other purpose; and

We are against bootlegging, have taken every avenue legally open to us to stamp it out and will continue to do so.

Whatever our points of difference on the matters discussed here may be, I am sure we all agree that the automobile industry is a highly competitive one and that, were it not so, the benefits that have accrued from it to the entire economy could never have become as great as they are.

Under our free competitive system, all business is encouraged, not stifled. Manufacturers are encouraged to create more and

better products and to sell them at ever increasing volume. This healthy state of affairs, it seems to me, provides stimulus and strength to the entire economy.

The automobile industry, operating under this system, has built and sold the more than 47 million passenger cars and 9 million trucks that are now in use in the United States. Nearly 43 million cars and trucks were produced in the past six years. The process of operating and servicing these millions of vehicles provides employment for a large number of people and feeds many billions of dollars into the economy in the form of expenditures for gasoline, replacement parts, repair service, and highways.

I am convinced that any legislation, however sincerely conceived, that may attempt through unnecessary controls or artificial limitations, to dictate the relationship between dealer and manufacturer, can have just one effect—to weaken dangerously an industry fundamental to the nation's economic growth.

At the beginning of this statement, I referred to the paramount interest of the consumer in these matters we have been discussing.

I am convinced that if the automobile industry is not allowed the freedom it needs to grow and to develop, the consumer eventually will pay the triple penalty that is always levied by short supply—higher prices, lower quality and a static if not backward product.

Thank you for allowing me to present my views to you and for your patience in listening to me.

a statement...

by Lewis D. Crusoe, Executive Vice-President—Car and Truck Divisions, Ford Motor Company, before the Subcommittee on Automobile Marketing Practices of the U. S. Senate Interstate and Foreign Commerce Committee at Washington, D. C., Monday, March 12, 1956.

*Lewis D. Crusoe,
Executive Vice-President—
Car and Truck Divisions,
Ford Motor Company*



On Monday, March 12, 1956, Lewis D. Crusoe, Executive Vice-President—Car and Truck Divisions, Ford Motor Company, appeared before the Subcommittee on Automobile Marketing Practices of the U. S. Senate Interstate and Foreign Commerce Committee at Washington, D. C. The full text of his statement follows:

MY NAME is Lewis D. Crusoe. I am executive vice-president of Ford Motor Company, in charge of our car and truck divisions.

This Committee has been examining the prices we charge for the service of distributing our vehicles to dealers throughout the country. These prices have been characterized by some of the previous witnesses as "phantom freight." This suggests that there is some misunderstanding about the fundamental economics of our distribution system. Perhaps it would be helpful here to describe for you the evolution of the branch assembly system as it exists today in Ford Motor Company.

Henry Ford established his first branch automobile assembly plant in Kansas City in the year 1909. By 1915, the Company was operating 23 branch assembly plants. Many of Mr. Ford's competitors believed at that time (and some of them may still believe) that a system of branch assembly plants was not the most efficient way to produce and distribute automobiles.

Mr. Ford had several reasons for believing that the branch assembly system was the most efficient method of producing and distributing cars for a nationwide market. Here are some of his reasons:

1. The establishment of branch plants throughout the country introduced an important degree of flexibility in the adjustment of production plans to local market conditions. It became possible to carry an important part of the nationwide inventory of automobiles in the form of unassembled pieces, with consequent savings in storage costs and investment.

2. Completed automobiles are peculiarly subject to damage during loading, unloading, and shipment. The introduction of branch assembly plants enabled manufacturers to apply paint and fabrics to cars at points as close to the market as possible, thus reducing the risk of transit damage.

3. By becoming a taxpayer and an employer in many communities, Ford Motor Company earned the support and interest of the residents of those communities. This undoubtedly helped the Company secure early widespread acceptance of the Ford car.

4. As the public acceptance of automobiles and the population of our country increased, the market grew and it became necessary to expand production capacities. If all of this expansion had been carried out simply by making the centrally located plants larger, the management, labor and facilities problems soon would have become insoluble.

5. The problem of recruiting workers to build the growing volume of new cars suggested its own solution: bring the jobs to the workers instead of trying to bring all of the workers to the jobs. By helping to spread new employment opportunities throughout the country, Ford Motor Company accelerated the creation of a national market for its products.

6. Finally, branch assembly enabled Ford Motor Company to service the needs of its dealers quickly and economically.

The attainment of savings in freight costs through the shipment of component parts rather than of assembled automobiles was not a principal factor behind the initial decision of our Company to establish branch assembly plants. Company records show that, during the early years of Ford branch plant operations, there were no freight-cost savings. The railroads were neither willing nor able to establish low rates on the shipment of component parts to branch plants until the volume of these shipments reached a point high enough to justify rate reductions. The attainment of such volumes did not come overnight, nor were they attained at the same time for every one of our branch plants. The reductions in freight costs were achieved slowly and in small amounts — in the same way that cost reductions were obtained in other phases of the automobile business.

Nevertheless, from the very beginning, it must have been obvious that real opportunities existed for long-run distribution savings through the use of branch assembly plants. Because of the configuration of an automobile, the shipment of assembled cars necessarily involves the shipment of substantial cubic displacement with relatively little weight. In a sense, by shipping empty automobiles, we were paying for the transportation of voids, or of fresh air.

For the reasons I have stated, Ford Motor Company became committed to a branch plant assembly system early in its history. This commitment, however, was not without risks. In order to make use of semi-skilled local labor, it was necessary to design tools and to plan assembly methods in a way that would minimize the need for large numbers of highly skilled tradesmen. This required substantial investments on the part of the Company. Further, the costs of building a large number of relatively small plants were then, and remain today, greater than the costs of building a few large plants to produce an equivalent number of cars. The efficient operation of the branch plant system called for the development of entirely new methods of production control, scheduling and materials handling. Even more important was the creation of techniques to assure dimensional control of the parts so that they would be fully interchangeable and, hence, usable at any assembly plant.

As the years passed, the cost savings associated with branch assembly of automobiles increased. Extensive improvements were made

in the methods of loading, shipping, and unloading component parts. The development of a nationwide highway network led to the emergence of haulaway carriers. They could compete effectively with the railroads for the business of transporting assembled cars, safely and quickly, from the factory to the dealer's door. One of the important advantages of the haulaway method of transportation was its ability to drop off cars in small quantities at individual dealerships, without prohibitive cost penalties. In addition, the enormous increase in the number of combinations of colors, body types, engines and accessories made it even more essential that dealers be able to obtain quick delivery of the specific models that their customers wanted.

During this period of evolution, Ford Motor Company included, in its aggregate price, compensation for the services it performed in distributing its products. For many years, this portion of our price was based largely upon the price asked by the railroads for performing a broadly similar function. This system of pricing worked well for many years, and it was followed by a number of our competitors.

In our financial planning, we have never segregated the revenues and costs of our distribution service from the other revenues and costs of our business. Our efforts have been directed toward a continuing reduction in all of our costs of building and distributing cars. It has never been true that our distribution prices were designed to provide auxiliary profits, unrelated to our system of manufacturing and selling motor cars. Rather, the cost savings attained from our branch plant system permitted us to make dramatic improvements in our products, and to offer these to all of our customers at lower aggregate prices. Had we chosen to pass on these savings solely through reductions in the distribution portion of our prices, we could not have achieved the product improvements that have led to increasingly higher sales volumes. These higher volumes permitted the maintenance of low selling prices to *all* of our customers. Every buyer, whether in California or in Michigan, paid relatively less for a Ford car than he would have paid if we had not built high volumes with advanced products.

In 1954, Ford Motor Company led the industry in making substantial reductions in its prices for distributing cars and trucks to distant market areas. The principal reason for this change was the emergence of a type of competition that offered a somewhat similar

service at a lower price, namely, tow-bar and driveaway transportation. It is true that relatively few people are interested in purchasing, as new cars, units that have been driven or towed up to twenty-five hundred miles. Nevertheless, a small percentage of our customers began to patronize this competing service, because it offered some price advantage. To the extent that this occurred, it impaired our ability to utilize our branch assembly plants efficiently and disrupted our authorized dealer system. We decided, therefore, to meet this competition, in the interests of ourselves and our dealers, by making substantial reductions in our distribution prices to distant points.

In October, 1954, we reduced the distribution price of a Ford car on the West Coast, for example, by over \$100. We made a second reduction a month later, and in February, 1956, we made additional reductions in the distribution portion of our prices. On a Ford car, these reductions add up to \$150 to dealers on the West Coast, \$100 in Salt Lake City, and \$44 in Oklahoma City.

We are confident that Ford Motor Company's distribution pricing plan is fair and equitable to all concerned. The prices are consistent with our pattern of costs, and at the same time they meet, in general, the competition offered by other transportation media. The price differentials between any two points in the country have been reduced to levels that we believe are small enough to meet the competition offered by casual methods of transportation. The total revenue received by the Company for its distribution services is substantially less than our aggregate inbound and outbound freight costs. We estimate that, on the basis of our present prices, the Company will pay over \$15 million more this year in freight costs than it will receive for its distribution services.

Although the relationship between automobile manufacturers' freight costs and the prices charged for the distribution of vehicles is only one aspect of this story, it has received a great deal of attention in earlier testimony before this Committee. For example, one witness stated that American car buyers are paying approximately \$280 million annually in so-called "phantom freight." This witness estimated that, in 1954, the average charge made by manufacturers for delivering vehicles from branch plants to dealers was \$75, and that the average cost of shipping components to the branch plants was \$35. These estimates were derived from statistics published by the Interstate Commerce Commission. The witness characterized

the difference of \$40 per vehicle as "phantom freight," and he extended this estimate, at 1955 volume, to \$280,000,000 annually.

The first trouble with this analysis is that the witness has employed data that are irrelevant to the problem. The \$75 figure is the average freight cost on automobiles that happened to be shipped by rail, regardless of source or destination — not the average distribution charge made by manufacturers. The \$35 is the average freight cost, per automobile, for shipping automotive parts, whatever their destination; it is not the additional freight cost on parts shipped to assembly plants. The second major difficulty is that the calculation leaves out entirely the costs actually incurred by manufacturers in shipping vehicles from assembly plants to dealers. In addition, the witness applied 1954 figures to 1955, although all manufacturers had reduced their distribution prices late in 1954.

To illustrate how seriously the analysis of this witness is in error, we have applied it to Ford Motor Company data for 1956. Using this method of calculation, we obtain a so-called "phantom freight" figure of \$68.77 per vehicle. When we take our actual distribution prices, less actual outbound freight costs and actual additional inbound freight costs to assembly plants, we get a *loss* figure of \$7.54. The method used by the witness in estimating "phantom freight" is wrong by about \$76 per vehicle, even without taking into account any of the non-freight costs of a branch assembly system.

Now, are there any feasible alternatives to our present pricing system? One suggested plan is contained in a bill introduced by Representative Hinshaw. He proposed that automotive manufacturers would be permitted to charge only "transportation charges incurred in making delivery" of automobiles. The language of the bill does not make clear whether one of the most important costs of the manufacturers—the freight paid for shipment of parts and components to assembly plants—could be included. Even if charging for both inbound and outbound freight were permitted, however, the pricing system required by the bill would result in many inequities and, in our opinion, would be completely unworkable.

Perhaps the most significant consequence of such a pricing system would be its tendency to create local monopolies around the assembly plants of particular producers. For example, the Miami, Florida market is now served by one manufacturer from an assembly plant

in Atlanta, and by a competitor from an assembly plant in St. Louis. The cars produced by these manufacturers have generally similar specifications, and they are designed to sell at approximately the same price. At present, they are competitive price-wise in all parts of the country. Under the Hinshaw Bill, however, the car assembled in St. Louis would cost the Miami dealer \$58 more than the car assembled in Atlanta. We think it obvious that the Miami dealers handling the higher-priced car would soon be put out of business.

Similar price distortions would arise among different models of the same make of car. For example, our Ford Division has two California assembly plants—one in San Jose and one in Long Beach. Our Country Squire station wagon model is produced at our San Jose plant, but not at our Long Beach plant because of facility limitations. This car, which is our most expensive Ford station wagon, is priced at wholesale about \$73 above the next most expensive Ford station wagon. In Los Angeles, however, this price spread would increase to \$123 under an actual-freight-cost system because the Country Squire would have to bear the added costs of outbound freight from San Jose to Los Angeles.

Even on the same model car delivered to the same dealer at different times, an actual-freight-cost system would produce extreme price distortions. Our sourcing pattern changes constantly, because of changes in national or regional demand, local production problems and other factors. If we were to start from scratch today and build a new set of plants designed to source all production ideally, the system would be out of balance with market requirements before the last bricks could be laid. Our market simply is not static. We learned long ago that we cannot maintain a fixed sourcing pattern, even for one week at a time.

A good example is our experience in the Denver market area during 1955. We shipped Ford cars to Denver from four different assembly plants: Kansas City, Dallas, Minneapolis and San Jose. Our total freight cost is \$164 more on a car sent to Denver from San Jose than from Kansas City. If we were forced to price the San Jose car \$164 higher than the Kansas City car, it would be priced beyond the reach of our Denver dealers. Price variances of this kind obviously would prevent efficient use of our branch assembly plants and make it impossible for us to provide stable employment in them.

In addition, the pricing method required by the Hinshaw Bill would fail to meet the test of the market place. Its adoption would tend to create a whole new series of economic incentives for bootlegging cars from the cities where the cars are assembled to outlying points.

Another serious aspect of the Hinshaw Bill would be its possible adverse effect on those automotive producers who have few or no branch assembly plants. This already has been pointed out to the Committee by a witness at an earlier session.

I should like to make one final point about our distribution pricing method. We constantly try to reduce our total costs of production and distribution and to pass these savings on to our customers in the form of better products or lower prices. We shall continue to review our distribution service, and as we find new and better ways to perform it, we shall make appropriate changes in the price we ask for it. It is obvious that we have made tremendous progress already, and our organization is dedicated to seeking continued progress.

New Car Bootlegging

One of the basic premises of our business is the existence of a nationwide market for automobiles. When we talk about the automobile industry, we usually discuss it in terms of totals—total production for a year, total number of dealers, total number of sales, etc. It is easier for us to consider the market as a national market—the total market—and to relate it to the other totals with which we are familiar.

Actually, we do not distribute our cars in totals. With few exceptions, our dealers sell our products one by one—to different people, in different locations. In order to set up a systematic sales and distribution plan, geared to individual market needs, we start by breaking down the national market into its component parts. The whole market can be divided into about three hundred major marketing areas. Each of these areas has its own unique characteristics. Each has a special economic atmosphere which is affected by all the usual factors—spending habits, income levels, the relative importance of industry and agriculture, and the degree to which the seasons and the weather may affect the area's prosperity.

Each of the 300 areas may be divided into smaller markets. All of them are equally subject to the same influences which, in turn,

must be taken into account if we are to obtain an accurate estimate of the potentials they present for sales.

It is not enough simply to know about the differences and variations in the various segments of the national market. We also must be prepared to do something about them. The knowledge we acquire in our continuing study of the multifaceted national market is the foundation upon which we build our integrated system of factories, assembly plants and dealer locations. The relationships here are intricate and interlocking.

Having established our network of production facilities and outlets, our next task is the establishment of sales objectives, or targets. These sales plans are developed in coordination with the individual dealer involved, and are based on our joint appraisal of the specific requirements of his trading area. We and the dealer are served best if the cars he sells are moved into the general market area which his dealership is intended to serve. Having established our national goals, it is necessary that we strive for the fullest possible development of each dealer's natural market area. If our competitive position is sound in each dealer area, it will be sound in the aggregate national market. Our total market strength can only equal the sum of the strength of its component parts.

"Bootlegging" undermines all of these carefully-laid plans. It not only destroys the balance and validity of our national planning but impairs the development of the local markets, on which our dealers have based their investments, and on which we have premised our own investments in branch assembly plants and factories.

Ford Motor Company has been, is now, and always will be fundamentally opposed to "bootlegging" and everything that goes with it. We are mindful that the surface dangers of bootlegging, like the visible portion of an iceberg, are only an indication of the damage it can wreak upon the entire system of automobile distribution. As far as the management of Ford Motor Company is concerned, we will use every legitimate means at our command to curb bootlegging until the day comes when it becomes a rarity to find a Ford Motor Company car in bootleg channels.

Bootlegging is not a new phenomenon; nor is it unique to our industry. In various forms, it has plagued many other industries. In its 1939 report on the motor vehicle industry, the Federal Trade Commission said this:

"The practice of a used-car lot operator, filling station attendant, or other person not authorized to act as a new-car dealer, who has little or no overhead, and who frequently is a 'fly-by-night' operator who purchased distress merchandise from dealers and resells it at cut prices, has long been bitterly complained against by dealers and deplored by the manufacturers as unfair competition."

During the period following the second World War when cars were scarce, there was no incentive on the part of authorized dealers to sell their cars in other than normal channels. They could sell all they could get at retail and at a good profit.

With the return of a buyer's market in 1953, some dealers began the practice of selling some of their cars into bootleg channels. In doing so, they generally realized less gross profit than if they had sold the cars at retail; but the transactions involved little or no sales effort. It was a form of quick profit business for those dealers. It was detrimental, however, to the dealers located in the areas in which the cars ultimately were sold to the retail customer; it was detrimental to the product and to the public; and ultimately it was detrimental to the business of the offending dealer himself, because he was failing to develop his own continuing, repeat market for cars.

Our studies and observations with respect to bootlegging have taught us that it is the popular car—the car most desired by the public—that is sought by the bootleg operators and most often appears in bootleg channels. These cars often appear early in the model year, when they are scarce and when their newness appeals most to the public. This, of course, is normally the time when the authorized dealers' stocks are the lowest. Indeed, some of our cars have appeared on used car lots even before the formal introduction dates of the new models.

The appearance of many of the cars in bootleg channels in recent years has resulted from the sale of new cars by concerns that had purchased them from dealers ostensibly for leasing purposes. The business of leasing cars and trucks had grown tremendously during the early postwar period, in part because of certain income tax policies then in effect. Coincidental with the return of competition in car marketing, there was a change in tax depreciation policy by the Internal Revenue Service and a substantial decline in the car leasing business. A number of these leasing companies then discov-

ered that they could resell to used car dealers, at a profit, the cars they had bought at low fleet-owner prices from authorized dealers. Hence, some car leasing companies—and fleet owners—became car brokers. At the same time, other individuals, seeing the profit opportunities of this process, began to pose as car leasing companies and fleet users, and entered the new car brokerage business.

On February 24, 1954, Mr. Ford sent a letter to all of our dealers in which he outlined the reasons why bootlegging is detrimental to the dealers, the product and the public and in which he asked that our dealers refrain from the practice. A copy of Mr. Ford's letter is attached as Exhibit II. (See Page 22)

Since Mr. Ford sent his letter, we have made a number of investigations of the bootlegging problem in its various forms. We have discussed it with our National Dealer Councils, and we have discussed it with individual dealers whose cars have been found in the bootleg market. We have come to three basic conclusions. They are:

- (1) That sales to fictitious fleet owners (usually posing as leasing companies) comprise a high percentage of the initial sales made into bootleg channels by authorized dealers;
- (2) That some of the current model cars that turn up on used car lots were sold innocently into bootleg channels by the authorized selling dealers; and
- (3) That the total number of new Ford Motor Company cars moving in bootleg channels is not substantial, relative to the total number of new cars made and sold nationally.

Discussing these conclusions in order:

In the summer of 1955, we analyzed the sales records of about 3700 Ford cars that were reported to us as having turned up on used car lots for sale as new. We found that they fell into five categories:

Parties to Whom Originally Sold by Dealers	Number of Units	Percentages
Fictitious Fleet Owners and		
Leasing Companies	1874	50.5
Used Car Dealers	401	10.8
Bona fide Fleet Owners and Leasing Companies	416	11.2
Other Companies	305	8.2
Individuals	717	19.3
Total	3713	100

We believe that substantially all of the sales to used car dealers, and most of the sales to fictitious fleet owners, were known to have been bootleg sales when made. Most of the other sales, however, probably were made innocently by the authorized dealers involved.

Since early in 1954, approximately 15,000 new Ford cars have been reported to us as having appeared on used car lots. We realize, of course, that these are not all of the new Ford cars that have found their way into bootleg channels. Assuming, however, that four times this number actually were bootlegged, the total number of Ford cars bootlegged in the two-year period would be only about 2% of the total number new Ford cars marketed. We are fully aware, nevertheless, that at specific bootleg outlet points, the percentage from time to time has been considerably higher, and in an amount to be seriously distressing to our local authorized dealers.

It has been asserted that one of the principal causes of bootlegging has been the alleged "forcing" of cars upon dealers by manufacturers. It has not been the policy or practice of our Company to force cars upon its dealers.

Under our procedure, Field Managers receive from each dealer in the early part of each month his order for the next month and his estimated requirements for the following two months. The Field Managers assist the dealer in this connection by providing pertinent information from registration data, ten-day report sales and stock figures, future stock level and market penetration objectives, previous estimates of requirements and other market data.

The numbers and types of vehicles ordered by the dealers are the result of discussions with the dealers by zone and district sales personnel, based on the dealer's sales plans and the performance of his facing competition. The primary objective of our Company and our sales organization is to realize the maximum sales of our products to the public. To accomplish this purpose, our sales personnel have been schooled and instructed to work with our dealers so as to accomplish this objective with a profit to the dealers, while at the same time maintaining an inventory of vehicles in balance with the requirements for these sales. Deliberate overstocking of any dealer is totally at odds with our plan of merchandising.

With the exception of a few brief periods, Ford Motor Company products have been in short supply throughout the entire postwar

period. Even after Government controls were ended in the middle of 1953, we were not able to meet the demand for our products until recently completed facilities, and some slackening in the general market, made it possible. We were in the fortunate circumstance of having such acceptable products to offer that we were not confronted with the problem of oversupply of our cars.

Until December, 1955, the stocks of our Ford car dealers, in terms of days' supply, were far below normal working levels, and were below the average of the industry as a whole. A thirty-days' supply of cars traditionally has been considered a minimum working level in our industry. Here were the Ford car dealers' stocks, by months, in 1955 as compared with the rest of the industry:

	FORD CAR DEALERS Days Supply	INDUSTRY LESS FORD CAR Days Supply
1955 January	11.8	26.5
February	10.7	28.0
March	11.3	28.3
April	11.3	28.8
May	13.3	28.4
June	17.9	27.7
July	16.7	31.8
August	14.2	31.3
September	11.4	18.6
October	13.6	25.2
November	20.8	33.2
December	26.4	35.9

During most of 1954, and for the first 11 months of 1955, our assembly plants and most of our other manufacturing operations were running at a high rate of overtime—30% during most of 1955. Not until December, 1955, did our dealers' stocks reach levels which would indicate any reason for reducing our schedules. We are now operating on a basis calculated to provide only for the necessary maintenance of our dealers' stocks for the selling season.

We have considered the several bills that have been introduced as remedies for new car bootlegging. Most of them are commented upon in Exhibit I, attached to this Statement. (See Page 19). We do not believe that legislation in this field is the answer. Rather, in our view, the solution lies in active attention to the problem by the

manufacturers and the dealers and effective merchandising by the dealers in the areas wherever new cars appear in bootleg channels.

The bootleg dealer really has very little to offer the customer. The authorized dealer not only can meet the bootlegger price-wise, but he has the added appeal of all the benefits associated with an established, permanent business house.

The dealer's best means of combating bootlegging lies in inspiring public confidence in himself and in the franchise he holds. His best chance of success lies in the manner in which he treats his customer. Every buyer is making an important investment when he drives a new car home. He expects—and has a right to expect—fair treatment and first-class service. If he is convinced that the dealer's personal attention and interest extend well beyond the original purchase, he will be more inclined to turn to the dealer—and not to an unknown bootlegger—for his next purchase of a new car.

We believe that our recent adjustments in distribution prices will have a very salutary effect in reducing bootlegging. But we shall not stop there. We shall always be alert to every opportunity for improvement in our methods, and will continue to work with our dealers to minimize the leakage of our products into bootleg channels.

The Past Three Years in the Auto Industry

In relation to the period 1946 through 1952, the years 1953 and 1954 saw a sharp decline in the high net profits per new unit retailed by automobile dealers. In addition, there was an over-all decline in their net profits, as a percent of return on their investments. These years also saw the reappearance of price advertising and hard price competition by automobile dealers for the first time since the beginning of World War II.

As 1954 progressed, many prophesied a continuance of the decline and a gloomy year for 1955. Predictions ran all the way from a mild recession to a deep depression reminiscent of 1933. But these prophets of gloom were wrong, largely because the automotive industry sparked the trend of the entire economy toward higher levels of production and sales.

The extraordinary strength of the market in 1955 surpassed even the most optimistic estimate made by any of us. We at Ford knew that the market was growing, but we did not anticipate the sudden break-through to new high levels of demand that began in

January and continued throughout the year. In an effort to satisfy the tremendous demand for our cars and trucks, we worked most of our plants an extra hour every day and most of the Saturdays throughout the year.

In the interests of our dealers, as well as ourselves, we tried to preserve our share of the market. But in spite of our peak output, our penetration of the market declined from 30.2% in 1954 to 28.5% in 1955. In other words, we were forced to give up to others a part of the market we had earned the previous year.

There are those who claim that the automobile market was oversold in 1955 and that the leaders in the industry should have competed softly. Just how one goes about competing softly in this or any other business I do not know. If the market is there, as it was, and sales hold up, as they did, how can it be said that cars were overbuilt or that the market was oversold? Who can say that Ford, on any basis, oversold the market or its dealers, when its dealers' stocks were well below normal levels throughout the year? What would have happened if we had failed to produce what we did? The answer is obvious: We would have abdicated our hard-won share of the market and donated a sizeable bloc of our customers to our competition.

Let us take a brief look at the effects upon dealers' profits of the so-called "overproduction" in 1955. In 1955, about two million more cars were made and sold than in 1954. According to our analysis of figures reported by NADA, automobile dealers as a whole made substantially more net profits before taxes in the year 1955 than they did in 1954. Our own Ford Motor Company dealers, who sold 466,000 more cars and trucks in 1955 than in 1954, increased their net profits before taxes by over 60%.

What is the reason for this marked improvement in the profit position of our Ford Motor Company dealers in 1955, as compared with 1954? One answer is that they had a highly desirable product and were able to offer a wide variety of models with color and equipment options to match every taste. Another answer is that their used car business was good throughout the year. More importantly, however, they did a larger volume of business on a relatively smaller investment base.

This proved what we and our more successful dealers have known for years—that in any retail business the key to success lies not so

much in the percent of return made on sales, as in the volume of sales and the rapidity with which the investments of the owner are turned over. The following chart shows what I mean:

COMPARISON OF FORD MOTOR COMPANY DEALERS' OPERATING RESULTS WITH TWELVE RETAIL LINES (AFTER FEDERAL INCOME TAXES)*

Type of Retail Business	% Net Profit to Worth	Inventory Turnover	% Net Profit to Sales
1955			
Ford Motor Company Dealers.....	16.28	12.8	1.73
1954			
Ford Motor Company Dealers.....	11.27	12.2	1.43
Groceries and Meats Independents..	12.11	19.0	1.15
Lumber and Bldg. Materials.....	6.92	6.1	1.97
Women's Specialty Shops.....	6.86	6.5	2.37
Lumber	6.85	4.4	2.09
Hardware	5.94	3.9	2.84
Shoes	5.69	4.2	1.97
Clothing, Men's and Boys'.....	5.66	3.6	2.69
Department Stores	5.44	6.0	2.17
Clothing, Men's and Women's.....	5.29	4.3	2.30
Furnishings—Men's	4.72	2.8	1.84
Furniture Installment	4.26	5.1	2.24
Furniture	3.58	4.3	1.38

Source for other than Ford car dealers: Dun & Bradstreet.

*Profits of our dealers *after taxes* are not available to us. These figures represent dealers' net profits before taxes after deducting our own estimate of their probable income taxes.

Some of our critics have charged that the high level of automotive production and sales for the year 1955 was attributable largely to "gimmick" advertising and "blitz" sales, with a consequent penalty of unsound credit terms.

To the extent that advertising in this or any other business is deceptive or misleading, it is against the best interests of everyone concerned because it is dishonest. We direct our dealers to cease such advertising when we find it, and it is our intention to prevent any such advertising in the future. There are other forms of advertising which do not fall into the dishonest category but which, nevertheless, are objectionable from the standpoint of good business practice or good ethics. We discourage and dissuade our dealers from such practices, and we will continue to move against any such

tendency on their part. Attached as Exhibits III and IV are letters on this subject which we sent to our dealers to make sure that they thoroughly understand our views in this regard. (See Pages 24-25-26.)

We all have heard much in these hearings about so-called "volume dealers," "wheel and deal" policies, "stimulator dealers" and "blitz sales." These terms apparently are now epithets, which are often applied indiscriminately to dealerships, policies and practices which the user condemns for one reason or another.

I confess that I do not know exactly what these terms mean. They seem to mean all things to all people. They have been extensively used by persons both in and out of the industry, but rarely have they been defined or used in a context that would give them a definite meaning. With^{out} a clear definition of these terms, it is difficult to comment on them, but I would like to say this:

We believe that the success of automobile dealers depends in large part upon the volume of business the manufacturers and the dealers attain. If achievement of high volume is accomplished without resort to any unfair or deceptive means, and without detriment to the service normally afforded to the customers' cars, we applaud so-called "volume dealers." On the other hand, if a dealer achieves volume solely on the basis of a quick dollar, without regard for his continuing responsibility to his customers and without a plan for building a permanent repeat business, his policies could well merit the term "wheel and deal." His short-sighted practices are not suited to our distribution program, and his dealership is not a sound component of our distribution organization.

I do not know either exactly what a "stimulator dealer" is. If it means the appointment of a dealer with well-rounded sales and service facilities who achieves a high volume of sales through proved, sound merchandising techniques and, as a result, energizes his brother dealers into greater sales activity, I can see nothing wrong with such a dealer. On the other hand, if a so-called "stimulator dealer" means a dealer with inadequate facilities, and consequent low overhead, who is appointed to irritate other dealers into profitless sales activities, we do not have any such dealers. We have never appointed dealers for that purpose, and we have no intention of doing so in the future.

With respect to so-called "blitz sales," we all know that a recognized merchandising technique in many retail industries is to hold

periodic sales. If by the term "blitz sales" is meant the promotion of a high volume of sales over a short period of time in order to stimulate public interest and move merchandise at a reasonable profit, I do not see how such sales can be condemned. We like aggressive and colorful selling. But we do not like, and we do not condone, sales that are so conducted as to imply that they are sales forced by the manufacturers, or involve the unloading of distress merchandise or are promoted through the use of questionable, off-beat tactics. That is not the way to build a sound and permanent business in the automobile, or any other industry.

Conclusion

In these discussions it has been necessary for us to dwell at some length on the negative aspects of what is essentially a positive, progress-minded industry. Yet any unbiased appraisal of our past accomplishments and future prospects must, I believe, conclude that the good vastly outweighs the not-so-good and the bad.

We believe we have demonstrated that we know how to make a business grow successfully. By its very nature, our business is complex and, at times, difficult to understand. But nothing is so big or so awesome that it defies analysis, and no problem is so grave that it cannot be solved.

Changing conditions in the market-place have focused attention on certain problems that are neither new nor unique to us and our industry. We believe that we and our dealers can, and will, solve these problems as we have resolved them in the past—by drawing on the reservoir of mutual trust that we are confident exists between us and our dealer organization.

EXHIBIT I**LEGISLATIVE REMEDIES FOR BOOTLEGGING**

A number of bills have been introduced in the Congress in the last two years designed to deal with the problem of new car "bootlegging."

On May 27, 1955, Representative Steed introduced a bill (H.R. 6544) which would make lawful the insertion of provisions in sales agreements that dealers shall sell only within designated geographical areas. Presumably, this bill would authorize restoration of the "service commission" and "territorial security" provisions which formerly were included in automobile sales agreements and which were intended, among other things, to minimize "bootlegging."

In 1938, a provision was inserted in the Ford sales agreement which had as one of its purposes the discouragement of "bootlegging." It provided that if one of our dealers sold a new vehicle to a customer residing in an area in which another authorized dealer was located, the selling dealer would pay a service commission of \$30 to the dealer in the customer's area. It also provided that the Company would act as umpire in the event disputes arose between the dealers.

In practice, enforcement of this provision was found to be both unpopular and impracticable. The provision contemplated that the dealers willingly would honor their obligations. But many of the dealers would not do so, and the Company was looked to as a collection agency between the dealers. Finally, the number of disputes between dealers grew to unmanageable proportions, and the Company ceased trying to enforce the provisions.

We believe that there is a sharp difference of opinion among Ford Motor Company dealers as to the desirability of closed territories, or territorial security. From the answers submitted on this question in the questionnaires circulated by this Committee, it would appear that there is a similar difference of opinion on this subject among dealers generally. Of the dealers who expressed themselves on this question, 8,693 were in favor and 7,766 were against territorial security.

Our past experience with the subject of closed territories for dealers leads us to doubt the wisdom of employing in automobile sales agreements the type of provision permitted by the Steed bill.

Our doubts are reinforced by the dramatic changes that have occurred in our way of life in the last 15 years. Our population is now more mobile and fluid than before, and people frequently move their residences. People often buy cars on trips, or while away from home, and many customers prefer to buy from dealers in communities other than those of their current residence.

We do not believe that contractual prohibitions of the type authorized by the Steed bill would be in the best interests of the public, the dealers, or the manufacturers. Competition among dealers in the same make of cars is a type of competition which, we believe, most dealers welcome and which ultimately is in the public interest.

A second type of proposed legislation would make it lawful for automobile manufacturers to provide in sales agreements that the dealers shall not sell vehicles to other than authorized dealers for resale and would permit termination by the manufacturers of dealers who knowingly violate this provision (S. 3596, introduced by Senator Potter for Senator Dirksen, and H.R. 9769, introduced by Representative Crumpacker).

While passage of this type of legislation would tend to clarify the law, we doubt that such legislation is desirable or necessary. It would place a heavy responsibility upon the manufacturers to assure that any action taken by them against "bootlegging" dealers would be completely fair to those dealers and to all other dealers. In this connection, it often is very difficult to determine whether a dealer "knowingly" has engaged in new car "bootlegging."

This type of legislation also would provide an additional basis for terminating dealers' sales agreements and would furnish to the manufacturers a further measure of control over the business of their dealers. We doubt that this is in the best interests of either the dealers or the public.

A third type of legislation designed to eliminate "bootlegging" would make it an unfair method of competition "for a manufacturer of motor vehicles to deliver or agree to deliver motor vehicles to any person, partnership, or corporation, who sells for resale as new vehicles in competition with that manufacturer's franchised dealers," would make violation punishable as a misdemeanor and would require the manufacturer to respond in treble damages to any person

injured in his business or property by reason of a violation (H.R. 5947, introduced by Representative Williams).

We think that this type of legislation is unreasonably harsh and unfair to the manufacturers. It is the dealers, and not the manufacturers, who make the "bootleg" sales in the first instance. Manifestly, it is impossible for the manufacturers to know in advance whether dealers will "bootleg" particular units sold to them. In order to protect themselves, were this type of legislation enacted into law, the manufacturers would be forced to exercise such caution, and police their dealers so closely, that only harm could result to the interests of both the dealers and the manufacturers, as well as to the interests of the consuming public.

EXHIBIT II

February 24, 1954

To All Ford and Lincoln-Mercury Dealers:

You are aware of the inroads currently being made in the long-established retail sales practices of the automobile industry by unethical "bootlegging" of cars and trucks.

In our opinion, no other practice can so quickly and completely destroy your most valuable business asset -- your Ford or Lincoln-Mercury franchise to sell cars and trucks.

When a dealer "bootlegs" a car or truck -- makes possible its sale to the retail customer by other than an authorized dealer -- he is automatically doing these five things:

- (1) Losing direct contact with the ultimate user of the car;
- (2) Losing the opportunity to service that new car owner and to build him into a long-time -- if not lifetime -- buyer of the product, accessories and services he, the dealer, has to sell;
- (3) Running the risk of having his product appear as "distress merchandise" -- in the eyes of the buying public, at least -- on used-car lots;
- (4) Undermining the basic principles of automobile distribution which we are constantly seeking to improve and under which so many dealers have prospered for so long; and
- (5) Making it less likely for the customer to receive the full benefit of his warranty and additional services to which he otherwise would be entitled.

To protect the investment of hundreds of millions of dollars you, as Ford and Lincoln-Mercury dealers, have made in buildings, facilities and equipment; to make certain that the buyers of our products have available to them the services of 65,000 mechanics and technicians you and we have trained and developed; and to assure yourselves of continuing profits from the sales of the finest line of cars and trucks the industry has ever known -- you should discourage "bootlegging" in every possible way open to you.

We have received a number of complaints directly traceable to our own dealers. We have the names of those dealers. We will deal with each case on an individual basis, in order that the foregoing considerations may be brought to the personal attention of any dealer engaging in the practice.

"Bootlegging" is not, unfortunately, something new in the automobile business. It has raised its rather shabby head in the past. But, as in the past, I am confident of our ability, working together, to eliminate this or any other selfishly motivated practice which is against the best interests of the customer, the dealer and the company.

I count on your cooperation.

/s/ Henry Ford II

EXHIBIT III

December 16, 1953

A sound advertising program is of vital importance to the merchandising of any product. Proper dealer advertising practices can go far to build wide public acceptance for Ford products.

We think you will agree that you have been provided with the best product in the industry and that your interests and ours will be best served by advertising practices that are directed toward acquainting the customer with its superior merits. Strong, competitive advertising is the hallmark of successful selling in the automobile industry. On the other hand, any advertising that depreciates the value of our product in the public mind by tending to label it as distress merchandise or otherwise indirectly reflecting upon the product or the dealer is harmful to the product, the dealer and the manufacturer.

The introduction of our new models offers an opportunity to urge all dealers to use constructive advertising which emphasizes the worth and superiority of our products and to avoid advertising that directly or indirectly reflects unfavorably upon the value of the product or causes customers to criticize advertising representations made by the dealer.

Any dealer who employs "would-you-take" offers in promoting sales should avoid any improper use of this medium. For example, the dollar amounts set forth in such offers should be a fair approximation of what the dealer would be willing to allow on the vehicles involved on the basis of final appraisals.

We urge all of you to conduct your advertising activities on a plane designed to build good will for both the product and your dealership.

EXHIBIT IV

December 9, 1955

From time to time, we have written you with respect to the vital importance of a sound advertising program to the merchandising of Ford products.

As you know, we firmly believe that competitive, but proper dealer advertising practices can go far toward building wide public acceptance of Ford products. In general, we find that dealers have adopted advertising practices that are building wide public acceptance of Ford products and are in keeping with the provisions of paragraph 11(k) of the Sales Agreement.

This provision, as you know, was inserted in the Sales Agreement between you and ourselves for the express purpose of stating our policy in this respect and, among other things, it specifically provides, with respect to advertising practices, that you shall:

"...avoid in every way any practice or advertising that is or might be detrimental to Company, COMPANY PRODUCTS or the public, or to which Company may object as being detrimental to the good name, good will or reputation of Company or COMPANY PRODUCTS."

It has come to our attention that, unfortunately, some dealers are using advertising copy of a type which causes customers to criticize severely the representations made in the copy.

There can be no question but that all of us need and want strong, competitive advertising. On the other hand, advertising that is misleading or deceptive is harmful to the public, our dealers and the Company.

The use by dealers of such detrimental type of advertising copy, if continued, will destroy much of the good will of the public toward Ford products, the Ford dealer organization and Ford Motor Company.

Therefore, in the interest of protecting the public, other dealers and ourselves, we shall insist that all advertising comply with the provisions of paragraph 11(k) of the Sales Agreement.

We again urge all of you to conduct your advertising activities on a plane designed to build good will for both the products and your dealership.

The CHAIRMAN. We will now adjourn to 2:30.

(Whereupon, at 12:35 p. m., the committee recessed to reconvene at 2:30 p. m. of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. GOSSETT. How shall I proceed, Mr. Chairman?

The CHAIRMAN. I just want to develop a modus operandi. Two Ford dealers, I understand, are here from Florida, who are very anxious to testify, and it would be very inconvenient if they could not today.

Mr. Hufstader is supposed to follow you, Mr. Gossett.

Is Mr. Hufstader here?

The CHAIRMAN. Would you be willing to yield so that these two dealers could testify before you?

Mr. HUFSTADER. Yes, sir.

The CHAIRMAN. They were here last week and we could not hear them.

Mr. HUFSTADER. I will be very glad to be helpful to the procedures of the committee.

The CHAIRMAN. Thank you.

Suppose you finish your statement, Mr. Gossett.

STATEMENT OF WILLIAM T. GOSSETT—Resumed

Mr. GOSSETT. The latter part of subsection (e) of section 1 of the bill imposes on the manufacturer, as part of its good-faith obligation to its dealers—

The CHAIRMAN. What page are you on?

Mr. GOSSETT. Page 15, Mr. Chairman.

The CHAIRMAN. Page 15.

Mr. GOSSETT. The bottom of the page.

The latter part of subsection (4) of section 1 of the bill imposes on the manufacturer, as part of its good-faith obligation to its dealers, the duty—

* * * to preserve and protect all the equities of the automobile dealer which are inherent in the nature of the relationship between the automobile dealer and the automobile manufacturer.

No key is provided to the amorphous standard of this new duty.

Now, I understand that you are considering an amendment which would eliminate that section, but I thought in the interest of putting the matter before the committee, I should read what I have to say about it.

The principal complaints of the public and of the dealers as well in recent years concerning automobile marketing have centered around various malpractices. They include new-car bootlegging, misleading advertising, unethical selling tactics, and substandard warranty and repair service. The proposed legislation would tend to perpetuate these practices, to the detriment of the industry and the public.

Since bootlegging is not in violation—

The CHAIRMAN. We have put your entire statement in the record.

Mr. GOSSETT. Yes, sir.

The CHAIRMAN. That is agreeable to you, is it not?

Mr. GOSSETT. Yes, sir.

In effect, new-car bootlegging amounts to promiscuous wholesaling of new cars by authorized dealers. Both the manufacturers and most dealers decry this practice because it upsets the distribution plans of the manufacturers and tends to harm the business of the authorized dealers in the areas where the cars ultimately are offered for sale to consumers. More than that, it violates the public interest, because the cars often are sold without proper preconditioning and under the misrepresentation that they are new cars, whereas, in fact, many of them have been driven many miles.

The Senate report relating to the O'Mahoney bill points out that one of the purposes of the bill is to assure the dealer that he may obtain delivery of the type and volume of cars ordered. If this is the intention of the bill, one of the equities of the dealer, it might be claimed, would be his right to order and receive from the manufacturer such number of cars as he may desire, whether he intends them to be sold to retail customers or at wholesale through bootleg channels.

Since bootlegging is not in violation of law and is not contrary to the specific provisions of any of the sales agreements now in use in the industry, the bill might well be construed to include as one of the dealers' equities the right to obtain cars for bootleg purposes. Similarly, the right to engage in advertising and promotional schemes that have been the subject of vigorous complaints by dealers and the public might well be regarded under this bill as being among the "equities" of the dealer.

In the interests of the public, the welfare of the dealers, and the reputation of the products, the manufacturers should be able to employ all legitimate means at their command to discourage these malpractices.

It would be most unfortunate, we think, to enact into law a bill that would tend to preserve and protect many of the evils against which the dealers and the public have complained the most. The combination, however, of the sweeping language of the second part of subsection 1 (e) and the inhibiting language of the first part of the subsection might well have that effect.

That the public interest requires that the manufacturers have the power and ability to take reasonable steps to curb malpractices on the part of dealers is illustrated we think by the preliminary report of the Subcommittee To Investigate Questionable Trade Practices on Automobile Dealers.

You will recall, Mr. Chairman, the Macy committee. This report read in pertinent part:

From the investigation which we have made and from an analysis of the complaints we have received throughout the country, it appears that abuses in the automobile-retail business fall into the following main categories:

1. Disregard of order lists.
2. Demanding premium payments.
3. Requiring trade-ins.
4. Undervaluation of trade-ins.
5. Loading cars with unwanted accessories and extras.
6. Discourteous treatment.

The committee feels that these abuses could be corrected without delay either by cooperation between the dealers and the manufacturers or by the insistence on the part of the manufacturers that the dealers conduct their business pursuant to a code of fair business practices.

The committee feels that the manufacturers have not been sufficiently diligent in policing their own industry. While they have sought to soothe the public

and build goodwill by announcing their policies relating to fair distribution and sale of automobiles, most companies have made very little real effort to see that these policies were put into practice.

Automobile manufacturers, by veiled reference to antitrust cases, take the position that there is nothing they can do to correct the abuses which exist in the industry. However, I feel that their position is open to serious question. I know of no Federal law, regulation, or decision which forces automobile manufacturers to renew the franchise of any dealer whose sales practices injure the reputation and goodwill of the manufacturer and bring his product into public disrepute.

The CHAIRMAN. Mr. Gossett, I will just ask one more question and I won't ask any more until you finish your statement, but this one I wanted to ask this morning and I neglected to do so.

Do you think that if this bill is passed, with the amendments, that your company would give up the franchise system and sell cars directly to the public?

Mr. GOSSETT. I think, Mr. Chairman, that my company would do all that it possibly could to preserve the franchise system.

It would give it up only as a last resort, but if we were not getting volume, if we were not keeping our facilities occupied, we might have to resort to changes in the system that would be designed to attain volume in a proper way.

The CHAIRMAN. So it all depends upon, in the event this bill is passed, how it works out?

Mr. GOSSETT. Yes, sir.

The problems with which the Macy committee was concerned stemmed, of course, from the sellers' market that then prevailed. The problems now current in the industry arise largely from the buyers' market in which we find ourselves. But the principle, as it affects the interests of the public, ethical dealers, and the manufacturers, is the same.

It would be unfortunate, indeed, if an effort to confer what we believe to be doubtful, short-term benefits upon automobile dealers were, at the same time, to have the effect of curbing the ability of the manufacturers to protect the interests of the public, ethical dealers, and the reputation of the products.

Another serious question under subsection (e) is whether additional dealers—

The CHAIRMAN. Excuse me, I am sorry, but along the lines of the question I asked, you put out a pamphlet titled, "Facts on Dealer Legislation Pending before Congress."

You are acquainted with that; aren't you?

Mr. GOSSETT. I don't know what you are referring to, Mr. Chairman. Oh, I can see it. Yes; the document to which you refer is a photostat of a printed document that the Ford Motor Co. distributed to its dealers at the dealers' suggestion.

The CHAIRMAN. In that document I find the following under the main heading "Dealers' Statement."

Subdivision 3: If either or both of these bills become law, the manufacturer may well be forced to seek entirely new methods of distributing, selling, and servicing the cars and trucks they make, methods that could seriously affect not only our future profits but the very existence of the authorized dealerships. For this very important reason we are against each of these bills.

Mr. GOSSETT. Yes; that was a statement, part of the resolution adopted by the dealers themselves, and they have reference I assume to what might have to be done in the event that by reason of this legis-

lation and some decisions that would follow it, the manufacturers were unable to exert the same influence on selling, and so that the volume of the industry were reduced, we might then I assume take other steps that might weaken or undermine the whole dealer system, and that is the thing they refer to, but I want to repeat that we will do that only as a last resort.

Another serious question under subsection (e) is whether additional dealers could be appointed by the manufacturers from time to time as conditions might require. The new dealers, of course, would compete with existing dealers. Claims, however unfounded, certainly will be made that appointments of new dealers diminish the "equities" of existing dealers. This dangerous aspect of the proposed legislation was pointed out by the Department of Justice in its letter of June 25, 1956, to the chairman of this committee.

The great uncertainty and numerous difficulties created by the proposed legislation with respect to new and additional dealerships were highlighted by testimony received by this committee on the opening day of its hearings. It was apparent that even the sponsors and proponents of the legislation were in disagreement on its interpretation. For example:

(a) Senator O'Mahoney stated, at page 42:

There is nothing in this bill that would prohibit a manufacturer from setting up a new dealer in any area; there is nothing whatsoever in the bill that would do it.

Again, the Senator said, at page 69:

The establishment of a new dealership by the factory, thus providing more competition for the dealer, would not give the dealer a right of action under this bill.

(b) NADA's executive vice president, Frederick J. Bell, agreed with this position in a colloquy with the committee counsel; but then he suggested that installation of a "stimulator dealer" would contain an "element of bad faith" (p. 218). Admiral Bell admitted, however, that he could not define a "stimulator dealer," and he conceded that he could not say when a new dealership was actually being placed in competition with an established dealership. This, he said, was essentially a matter of "how close is close" (p. 222).

(c) NADA's legislative counsel, Rowland Kirks, answered flatly that any appointment of a "stimulator dealer" would be, ipso facto, bad faith on the part of the manufacturer (p. 221).

In his view, the manufacturer would be liable if a second dealership sold more cars in proportion to its capital investment than the original dealership (p. 224). Thus, according to Dr. Kirks, if a new dealership does a better job than an established dealership with which it is in competition, then the established dealership would have a cause of action against the manufacturer.

The CHAIRMAN. I want to say that I don't agree with that.

Mr. GOSSETT. I am glad to hear you say that.

The CHAIRMAN. I say that particularly in view of the amendment that was proposed.

Mr. GOSSETT. I want to come to that amendment in just a moment. I think it will be very helpful, but I want to discuss it.

We think it fair to conclude that if the experts who appeared before this committee could not agree on such a basic aspect of the pending legislation, it is illogical to assume that juries selected from the general public would be able to reach consistent and fair decisions. The courts

would have equal difficulty in interpreting the intent and purpose of the law against the background of such a contradictory legislative history, made even more confused in the light of the debate on the Senate floor.

And I want to point out something that I really don't need to point out, and that is that when you have a jury verdict, you never get a precedent that you can rely on, because a jury in one place on the same set of facts, will decide a matter different from a jury in another place.

The CHAIRMAN. We always have that.

Mr. GOSSETT. But not in a situation like this.

The CHAIRMAN. Juries are asked to pass on very difficult things sometimes.

Mr. GOSSETT. But if they are called upon to determine whether I am performing in good faith precisely the terms of my contract, I shiver to think of the results.

The CHAIRMAN. Not when the contract is performed by a good lawyer like you.

Mr. GOSSETT. I am not sure I could pull that one off, sir. Another serious aspect of this part of the bill is that the duty on the part of the manufacturers "to preserve and protect all the equities of the automobile dealer" might well be construed to include the requirement that the manufacturers, on pain of damages, gear their production and pricing at such levels as to preserve each dealer's profitable investment.

This danger also was pointed out in the letter of the Department of Justice to the chairman of this committee referred to above.

Such an interpretation, particularly when coupled with the repressive effects of the vague and indefinite language of the first part of subsection (e), ultimately would lead to reduced volume of production and sales. The high values which the automotive industry presently offers to consumers are the result of high-volume, low-cost production. Reduction in volume could only be accompanied by higher costs, which necessarily would be translated into either higher prices or lower values to the consuming public.

The CHAIRMAN. On the question of damages, I have before me the wording of the Clayton Act, section 4, concerning treble damages, and there is the following:

That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount of controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Now, we use practically that same language in the bill, except we do not say "threefold damages." We say, "the damages."

So there is nothing new in the statute when we use the word "damages." We do not qualify it by "compensatory damages," "prospective damages," or "punitive damages." We just say "damages."

Mr. GOSSETT. Mr. Chairman, in your opinion and the opinion of your counsel, would that include anticipated profits? Suppose the dealer had been earning profits each year. Would that include his anticipated profits?

The CHAIRMAN. That is a nice question, and I would not want to hazard a guess on it at this moment.

But the point I want to make is that the use of the word "damages" is nothing new. And this bill that we have in mind is a supplement to the antitrust laws. And the antitrust laws, as I just read to you, particularly the Clayton Act, contain the word "damages."

Mr. Gossett. This bill is stated in the title, "to supplement the antitrust laws," but as was pointed out by the representative of the Department of Justice this morning, it has very little relation to the antitrust laws. This is not a case where the public interest is being protected. This is a case where one element or one section of an industry is given private rights against another section of the industry.

And in the Clayton Act, in the section you quoted, Mr. Chairman, there the whole basis of the statute was to protect the public interest and avoid having something done that violated the public interest.

The CHAIRMAN. Your observation that you just made is a sound one. Yet there is no doubt that this bill has relation to the antitrust laws, and we so state: "A bill to supplement the antitrust laws of the United States," and so forth.

Mr. Gossett. You so state it; yes, sir.

The CHAIRMAN. Of course, that does not necessarily make it so.

Mr. Gossett. That is my point. I am glad you made it for me.

The CHAIRMAN. I said, you made a very pertinent observation.

Mr. Gossett. I just want to make the point on section 2 which is out of the bill in the Senate, and I assume is under consideration for deletion here.

The CHAIRMAN. That is correct.

Mr. Gossett. That section might well result in many questions of business judgment for the courts, questions which the courts are not set up to handle and which traditionally are not submitted to them for determination. The courts would be required to supervise many of the working relationships between the manufacturers and the dealers. The judgment of the courts and juries would be substituted for the business judgment of the dealers and the manufacturers.

The CHAIRMAN. You can skip that. I would not recommend that provision.

Mr. Gossett. All right, sir.

I just want to make this point. In the Senate—

The CHAIRMAN. I want you to know that we are pretty careful over here. This committee goes through these bills with a fine comb.

Mr. Gossett. I certainly am aware of that, sir, and I am glad you are going through this one with the same careful process.

I want to make this point. This is what concerns us.

In the Senate, the reason stated for deleting section 2 of that bill, corresponding to section 2 of the House bill, the Celler bill, was that it was redundant. That was stated by Senator Case and confirmed by Senator O'Mahoney.

Now, that being the reason, the statement is and the inference is that the purpose of that section is accomplished by what remains in the bill, namely, section 3. And we are concerned about the language here which we discuss in section 3.

If you just permit me to go ahead, I will bring that out.

The CHAIRMAN. Go ahead.

Mr. GOSSETT. Section 3 of the bill would grant to automobile dealers the right to sue manufacturers for double damages, costs of suit, and an attorney's fee:

By reason of the failure of said automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealers.

This section would create a cause of action for punitive damages for failure of an automotive manufacturer to observe the requirements of "good faith," as defined in subsection (e) of section 1, "in performing or complying with any of the terms or provisions of the franchise."

Does this mean, Mr. Chairman, that the manufacturer could be held to have breached its duty of good faith even though it complied completely with all of its contractual obligations to the dealer under its sales agreement? Both the chairman of this committee and Senator O'Mahoney have made statements to this effect.

On page 2 of the transcript of these hearings, on July 2, 1956, the chairman of this committee said:

Under the bills, if the manufacturer fails to act in good faith, the dealer is given the right of court review to determine this issue, notwithstanding any provisions of the franchise agreement.

A similar statement is attributed to Senator O'Mahoney in the May 22 issue of a bulletin of the United States Motor Car Dealers Association.

If this startling innovation in the law of contracts were adopted by the courts—

The CHAIRMAN. Of course, I said also that the action was one involving good faith prospectively. It could not be good faith growing out of past action.

Mr. GOSSETT. Quite right. But I want to make another point. You are quite right on that, and we agree with that.

If this startling innovation in the law of contracts were adopted by the courts, a new and wholly uncharted dimension of obligation would be imposed upon the manufacturers. They never could rely upon the rights and obligations provided in the sales agreements.

For example, the manufacturer might be prevented from requiring the dealer to perform such a fundamentally important obligation as maintaining adequate facilities and personnel to provide essential warranty of quality and adequate repair services for customers, as specified in the sales agreement.

Another consequence of section 3 would be that the manufacturer, with whose decision concerning a franchise a jury might subsequently disagree, would be subject to a heavy penalty of damages for his decision.

Mr. MALETZ. Excuse me, Mr. Chairman.

Mr. Gossett, are you referring to H. R. 11360 as introduced or as proposed to be amended?

Mr. GOSSETT. I am referring to it here as introduced, but I think the argument applies as amended for a reason which I will state in a moment.

Mr. MALETZ. Very well.

Mr. GOSSETT. In view of the extraordinarily vague and ambiguous language used in the definition of "good faith" in subsection (e) of section 1 of the bill, the manufacturer thus might be so inhibited

in its decisions that inefficient dealers would, in effect, be feather-bedded into their "franchises."

Here again, there is disagreement among Members of Congress as to whether admittedly inefficient dealers could be terminated, as a matter of law, under the proposed legislation.

For example, the chairman of this committee expressed concern that the bill might prohibit a manufacturer from terminating an inefficient dealer who, despite his poor performance, might be trying in good faith to do a good job. Congressman Multer agreed that the proposed legislation might have this effect, stating:

* * * the manufacturer would have lost his right under the Senate version of the bill to cancel, regardless of inefficiency, if the dealer is acting in good faith.

At a later point, however, Congressman Multer said:

Let us agree that where the inefficient dealer—there is no question about his inefficiency—the manufacturer has the right to cancel out and does cancel out; there is no lawsuit.

The chairman agreed. We assume from this that the speakers meant that the manufacturer ought to win any such suit, as a matter of law.

In a final reversal, however, Congressman Multer decided that if the bill passes and is ruled constitutional, "you would be able to tell these manufacturers once you issue a franchise, that is a franchise in perpetuity."

Mr. MALETZ. Mr. Gossett, I do want to say this. I have read the transcript pretty carefully as you have, and I have just checked page 129 of the verbatim transcript.

I do not find any indication that the chairman has taken the position that this bill either in its amended form or as introduced would prohibit a manufacturer from canceling out or failing to renew an inefficient dealer.

Mr. GOSSETT. Oh, I quite agree. As a matter of fact, the chairman expressed concern that that might be the result, and he said that would be a barbarous result.

The CHAIRMAN. Well, how do you reconcile that with your statement purporting to indicate what I said on page—oh, you said I expressed concern?

Mr. GOSSETT. You expressed concern; yes, sir. You misunderstood me.

If this is the result of the proposed legislation, we agree with the observation of the chairman of this committee that it would be "a barbarous bill"—barbarous because of its serious consequences not only to the vitality of the industry, but to the entire economy of this Nation.

We know of no instance in the history of private industry in this country where such fundamental and essential rights have been taken from one segment of an industry in an effort to bestow a benefit upon another segment of that industry to the detriment of the public as a whole.

Now let me address my comments to the question Mr. Maletz has raised.

If we eliminate from section (e) that portion of the definition following the words "coercion or intimidation," we leave into section (e) the following:

(e) The term "good faith" shall mean the duty of the automobile manufacturer—

Mr. MALETZ. I beg your pardon, Mr. Gossett, I am sorry I don't believe you have the latest version of the amendment.

May I show you this copy?

Mr. GOSSETT. Please do. I thought I had the latest. Let me start over then, please.

The term "good faith" shall mean the duty of each party to any franchise and all its officers, employees, or agents thereof to act in a fair, equitable, and nonarbitrary manner toward each other so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party.

Now let's assume that the manufacturer has a 5-year contract and he has complied with all of the terms of the contract.

The dealer has had trouble, and the manufacturer suggests to him certain changes. He suggests he hire more salesmen, he suggests that he increase his facilities and personnel for service and warranty work and the dealer complies with all the suggestions.

He gets down at 8 o'clock in the morning and he leaves late at night. He works very hard and he acts in good faith. But he does not do a good job. He is being outsold, he is inefficient. He is the inefficient dealer to which you have referred, Mr. Chairman.

Now then, what is the situation?

The manufacturer decides that as a last resort he must terminate the dealer and he so advises him.

Maybe he, a couple of times says to him, "if you don't do those things, we have no alternative but to terminate you."

In the first place he gets charged with coercion. In the second place, he gets charged with bad faith or lack of good faith for having suggested these things and done these things, and that has to be decided by a jury.

Now if you have a contract and the manufacturer fails to perform the contract, then I can understand that would have to go to a jury.

Of if the dealer fails to perform the contract or is inefficient, the manufacturer terminates, the only issue then is whether there has been performance or nonperformance of contract.

But when you get before a jury with terms like this where the question of fairness and equity are involved, in a fair, equitable and nonarbitrary manner are involved, you do not know where you are coming out.

And so, as you have said, Mr. Chairman, this bill, even with the amendment, goes beyond the contract and gives the party a right beyond the contract; does it not?

The CHAIRMAN. That is right, because there is embraced in all the contracts for the future the terms of this law.

Mr. GOSSETT. And even though the manufacturer has performed his obligations under the contract to the letter he gets charged with having acted in bad faith.

The CHAIRMAN. I would not view it that way. In the case that you have cited, I don't see how the manufacturer could be charged with either being unfair or inequitable or arbitrary. I don't think so.

Mr. GOSSETT. But that is up to the jury, is it not?

The CHAIRMAN. Yes.

Mr. GOSSETT. And there is no provision in the statute, is there, which says that so long as the manufacturer uses normal persuasive selling methods and so long as the manufacturer performs his agreement, he does not have to put to a jury the question of whether he is acting in good faith.

The CHAIRMAN. We are always confronted with those difficulties in legislation when we seek generally to take care of all possible future contingencies.

But what we do is to cover a situation like that in the report for the edification of the court when it construes the statute or when it is in a position to instruct the jury. I think we would be very, very careful, in view of the plunge we are taking into new waters, as it were, to amplify in every reasonable way the intent of the Congress and how it does or does not cover the contingencies, one of which you spoke of just now.

Mr. GOSSETT. But could you not take the risk out of this from our standpoint without doing violence to the purposes of the statute by saying in so many words that nobody could misunderstand, that so long as the manufacturer was acting under the provisions of the contract and so long as he was using normal persuasive selling methods, that he is not subject to a charge of bad faith?

The CHAIRMAN. I think we do exactly that. We do the import of that with this very language. However, you make a strong point there from your point of view, and when we go over this bill, we will be very happy to get any suggestions which you might care to submit to us.

Mr. GOSSETT. We could not ask more than that, Mr. Chairman.

The CHAIRMAN. You agreed to do that this morning anyhow.

Mr. GOSSETT. Yes, sir.

The CHAIRMAN. Specifically this is the very core of the bill.

Mr. GOSSETT. It is indeed.

The CHAIRMAN. Let us have the benefit of your counsel and advice then.

Mr. GOSSETT. I want to express to the committee our great gratification with your decision or proposal to eliminate the second part of this definition. And I simply point out that the bad part of the definition, the thing that we object to, has not been entirely cured. And I am not prepared today to tell you how it could be cured.

The CHAIRMAN. Suppose you think about it a bit and let us have the benefit of your advice. And give us the particular language that you think might cover this information.

Mr. GOSSETT. Very well, sir.

The CHAIRMAN. It doesn't commit you to anything.

Mr. GOSSETT. Very well, sir.

The O'Mahoney bill was amended on the floor of the Senate on June 19, 1956, by deletion of section 2 and amendments made in subsection (e) of section 1, containing the definition of "good faith", and section 3, authorizing double damage suits.

Although these amendments create an appearance of fairness to the manufacturers as well as the dealers, they cured none of the basic defects of the bill. In our opinion, the bill still is basically unsound and is subject to most of the objections that were applicable prior to amendment.

I shan't read the balance of that, because we have discussed that fairly thoroughly. Then there are the constitutional questions. We believe that the proposed legislation raises a number of serious constitutional questions that should receive more thorough consideration than has been possible within the hurried schedule of the bills of Congress. These questions include those listed here, that the proposed legislation would vitiate the terms of the existing contracts freely arrived at between private parties, and nullify the rights of the parties under them, and so on.

Mr. MALETZ. May I interject a moment. I am sure you heard Mr. Bicks' testimony this morning.

Mr. GOSSETT. I did, indeed.

Mr. MALETZ. And Mr. Bicks stated to the committee that it was the view of the Department of Justice there was no constitutional objection to the bill with the amendments which the committee is presently considering. I know you would rather not commit yourself, but I am sure you are familiar with that testimony, and you would agree that that testimony has considerable substance, would you not?

Mr. GOSSETT. Indeed I would.

Mr. MALETZ. Now, another constitutional objection I am sure you must have—and I have not had the opportunity to read your statement on this point—is that the Senate bill as approved could be construed as subjecting the manufacturer to liability for acts committed prior to the passage of the legislation. Isn't that correct?

Mr. GOSSETT. Yes.

Mr. MALETZ. Now, one of the amendments this committee is presently considering is the inclusion of language to make it perfectly clear that it is only a manufacturer's act of bad faith after the legislation is adopted that would be actionable.

Mr. GOSSETT. I am glad to hear that.

Mr. MALETZ. I take it that that would overcome one of your constitutional objections, is that right?

Mr. GOSSETT. It would, sir.

The class aspect of the legislation is another basis for constitutional objection. I have referred to it, but I have not read that section. We feel very strongly about that aspect.

This brings me to the conclusion, Mr. Chairman.

Proponents of the proposed legislation have said that its objectives already have been attained by voluntary action of the manufacturers. Their stated purpose in seeking legislation is "to help create safeguards that will perpetuate, by law, actions already taken in Detroit. (Frederick J. Bell in the June 1956, issue of NADA Magazine.)

In other words, they seek by law to protect gains already made and thus to preserve the atmosphere of "good faith" in manufacturer-dealer relations in the automotive industry.

As I have said, we share wholeheartedly the objective of continued good faith in the industry. It is our conviction, however, that the legislation, far from achieving that objective, would have the opposite result. Indeed, its principal effect would be continually to stir up litigation and create hostility between the dealers and the manufacturers.

This seems to us self-evident from the terms of the proposed legislation itself. Its stated purpose is to provide a basis for and facilitate

the institution of suits by the dealers against the manufacturers. The inevitable consequences would be, we think, to encourage the parties to regard themselves as legal antagonists rather than as participants in a business venture.

Legal counsel for dealers would be compelled to advise their clients to "keep books" on the manufacturers in an effort to create evidence to be used as a basis for possible future suits. Conversely, the manufacturers would be obliged, as a matter of self-protection, to build a careful defense record concerning every dealer. Thus, a litigious atmosphere would replace a climate of cooperation and mutual endeavor, and the parties would be distracted from their main purpose, namely, the production, sale and servicing of automobiles.

If the proposed legislation were enacted, it would be necessary also for the manufacturers to take every available means of protecting themselves against charges of bad faith. One method would be to write into the sales agreement detailed descriptions of every conceivable obligation and responsibility of the dealer, to the end that the manufacturer could continue to operate in a normal manner. We hope that that would be effective.

Such provisions would at least make it difficult to prove lack of good faith on the part of the manufacturer for simply insisting on the performance by the dealer of specific provisions in the sales agreement. On the other hand, such detailed provisions would import into the sales agreement restrictions and rigidity that would impair the ability of the dealer and the manufacturer to adjust their relationships in the light of constantly changing circumstances.

I have discussed in some detail the adverse effects that the proposed legislation would have upon the public, the dealers, and the manufacturers. In addition to the more obvious and immediate effects that I have just described, the proposed legislation, in our opinion, would have these results: It would tend to perpetuate bootlegging and other unethical marketing practices by some authorized dealers; it would tend to undermine the authorized dealer system—

Mr. KEATING. Would you pardon an interruption there? This whole field is new to me. I am interested in the use of this word "bootlegger." Why is that an unethical practice, and why does it not simply result in consumers getting the same product for less money? If so, why would it not be desirable? Would you expound on that a little?

Mr. GOSSETT. May Mr. McNamara discuss that? He has made an investigation of that subject, and he is an operating man.

Mr. KEATING. Vice president in charge of bootlegging?

Mr. GOSSETT. Vice president in charge of investigating bootlegging.

Mr. McNAMARA. Mr. Congressman, sometimes I think I am in charge of bootlegging. It has been a matter of such great concern to us for such a long period of time, and we have devoted so much time to that, that it seems almost my primary duty at times.

I would like to read to you from a report submitted by Market Facts, Inc., a market research firm located at 39 South LaSalle Street in Chicago. We employed this firm to make a special study of bootlegging for us. This report—

Mr. KEATING. Do they tell us why it is bad? What I want to know is why it is bad.

Mr. McNAMARA. I think if I read three paragraphs of the report, you will see evidence of that. These findings raise the basic question, how really competitive are these bootleg dealers:

A look at the average prices charged by the bootleggers in contrast to those charged by the authorized Ford dealers reveals a significant difference, namely, that the bootlegger is not discounting nearly as much as the Ford dealer.

By that the report means that the bootlegger is charging the customer a higher price for the vehicle than the authorized Ford dealer is charging the customer.

Now, that was true in the six markets studied by this particular firm for us, Denver; Wichita, Kans.; Dallas; Charlotte; and two other markets.

Mr. KEATING. How do they get away with it?

Mr. McNAMARA. The public is ill informed about the prices charged by retail automotive dealers.

Mr. KEATING. In other words, it costs the consumer, to go into one of these bootleg lots, more to buy a new Ford car than it does to go into a regular Ford agency?

Mr. McNAMARA. In a great majority of the cases that was true. In about 13 percent of the cases checked by this particular firm for us in those markets, the bootlegger was charging less than the franchised dealer in the same market. In the great majority of the cases, the bootlegger was charging the public a higher price than the franchised dealer.

That is but one of the disadvantages that we see to the public in bootlegging. A second and very important disadvantage is related to the servicing of the vehicles. In 80 percent of the cases that we have checked, the bootleg operator has failed to properly precondition the vehicle prior to sale to the customer.

Mr. KEATING. That has happened in the case of regular dealers, too.

Mr. McNAMARA. Occasionally, no doubt, it does happen, Mr. Keating, but certainly it is not the customary practice.

Mr. GOSSETT. Mr. Keating, Mr. Ford——

Mr. KEATING. I agree that it is not a customary practice. But it happens.

Mr. GOSSETT. Mr. Ford wrote a letter to the Lincoln-Mercury dealers on February 24 in which he set forth the disadvantages to the dealers of bootlegging, and if you do not mind, I would like to read those to you, and Mr. McNamara can elaborate on them to the extent that you think necessary:

1. Losing direct contact with the ultimate user of the car.

You are speaking from the public standpoint, but this is directed to the dealers.

Mr. KEATING. That is right.

Mr. GOSSETT. (continuing):

2. Losing the opportunity to service that new-car owner and to build him into a long-time if not lifetime buyer of the products, accessories, and services he, the dealer, has to sell.

Mr. KEATING. But these dealers, the regular, authorized dealers, have had cars pushed on them so fast that they are not able to go back to the good, old-fashioned way they used years ago when they considered, "Now, we have got to give this fellow service; we have got to

keep him as a customer." All they can think of is pushing those cars out. They have been deluged with cars by the motor companies.

Now, that may be good for the stockholders of the motor companies and good for general business, but it leaves the dealers in the position where they just cannot try to give service to the customer any more.

Mr. McNAMARA. Mr. Congressman, our market studies which we make constantly of the satisfaction of our customers do not support the statement you have just made. We find no large-scale dissatisfaction among our customers with the service rendered by the dealers.

As a matter of fact, in the study I have before me, only 5 percent of the customers expressed any dissatisfaction whatsoever with the transactions surrounding the purchase of their new vehicle in the first year following the purchase.

Mr. Gossett. Mr. Keating, you were talking about car-forcing, and I have heard that discussed in a number of these hearings and have heard many of the statements made similar to the one you have just made, and we cannot talk about other companies, because we do not know the facts.

But I said this morning, and I want to repeat, that in our case, up until last November, we were being criticized by our dealers because we did not have enough cars, and any dealer who did not want the cars he got, all he had to do was say so and we would give them to another dealer who wanted them.

Now, this matter of forcing cars is something that we do not approve of, and our practice is to send to dealers the cars they order. They give us an estimate—take the month of June—they give us an estimate in March as to the number of cars they will need. They give us another estimate in April, and in May they give us firm orders, and we ship to them what they say they want in those orders.

Now, it is true that we talk with them; we sometimes try to persuade them that their market will absorb more. And right now we are going to be short of cars because the dealers did not order enough cars. The dealers are complaining over most of the areas of this country because they do not have enough cars to supply the market, because the market turned around very quickly.

Now, it can go either way. And I would not deny for a moment that there has been some car-forcing and there has been car-forcing at Ford Motor Co., but I would say that most of the dealers have not been forced to take cars since the war by Ford Motor Co. If they have, they have been doing themselves an injustice, because they could have said, "I don't want the cars," and somebody else would have taken them.

Now, there have been cases where a dealer has been urged to take more cars because he was being badly outsold by the competition when we knew that the competition's car was not a better car than our car, and he should have been selling comparably with the competition.

The CHAIRMAN. I understand that Senator Monroney has asked to testify some time this afternoon, and he wishes to testify on that very subject; namely, the alleged forcing of cars on dealers by the manufacturer. I suggest that you might wait for his testimony.

Mr. Gossett. I will be very glad to hear it. The distinguished Senator has learned much about this business and he has been in contact with a large number of dealers.

I would say, sir, that there is an absence in the record of any competent testimony to prove that Ford dealers have been forced to take cars.

Mr. KEATING. Please understand, Mr. Gossett, that my remarks were not directed at the Ford Co. Indeed, I have no knowledge about the situation in the Ford Co. It may be that the Ford Motor Co. just could not produce enough cars to satisfy the public, and if so, I am glad to hear it. I like to see good business, but I do not like to see dealers have cars pushed on them so fast that they just cannot, after they have sold a car, have the slightest interest in seeing that the customer's car runs right. They just do not have any time for that.

Mr. GOSSETT. Mr. Keating, we have just changed our practice to assure the customer's getting the best service and warranty. Under our warranty policy, we now pay the dealer, as we have for some time, 110 percent of the retail price of service parts that he uses in connection with warranty work. We pay him 100 percent of the retail price he charges for service, labor, in taking care of warranty work.

Now, 100 percent of the retail price charged gives him quite a profit on warranty work. Previously, under general practices in the industry, the dealer got 60 percent of the retail price, which was considerably more than his cost. So there is no reason why, so far as we are concerned, the dealer should not have given good service.

Now, let me just make this point that you have not understood and could not, but in this country we are selling many more cars now than we did before the war, and the dealers and the service facilities have not been increased to the same extent that sales have increased. So, they are really, in a way, not equipped, some of them. Some of them are well equipped and we have no criticism. But others have not been able to become equipped to take care of service, and those are the ones, perhaps, where the complaints have arisen. Others just do not care.

But what I am saying is that we want to do whatever we can to correct that situation, because we agree with you 100 percent about your attitude and the attitude of the public. I think most good dealers do agree with you.

Mr. KEATING. Did the Ford Motor Co. ever put out a bad car?

Mr. GOSSETT. Yes, sir.

Mr. KEATING. And when you put out a bad car what do you do about it? I commend you for your frankness. I think of course you have and the obvious answer is yes.

Mr. GOSSETT. Yes, sir.

Mr. KEATING. And I commend you for admitting it.

Mr. GOSSETT. We try to make it right with the customer and we urge the dealer to do so, and if it involves some part, something that we have done that has failed, we say to the dealer "You buy the part, we will pay you 110 percent of the cost of that part to replace it and we pay you 100 percent of the labor charge."

That is what we do.

Mr. QUIGLEY. When did that new policy go into effect?

Mr. GOSSETT. The 100-percent part went into effect, Mr. Quigley, about four months ago. We have always, for some years, paid 60 percent and that more than reimbursed the dealer for his costs and gave him a profit.

Mr. KEATING. Do you have some arrangement with big businessmen that they get all cars at a discount?

Mr. GOSSETT. No. sir.

Mr. KEATING. I was told the other day by a rather prominent businessman that I was a fool to pay list price for an automobile because all the automobile companies had a select club that most Congressmen belonged to, and many big businessmen, and special discounts were given.

All you had to do was have some connections and belong to this club and you got a discount.

Did you ever hear of anything like that?

Mr. GOSSETT. No. sir. I would not say that the Ford Motor Co. never sold a car—

The CHAIRMAN. Mr. Gossett, I would advise counsel not to answer because that might incriminate you. It is a violation of the Robinson-Patman Act.

Mr. KEATING. This fellow who told me is an absolutely reliable man. I never thought of such a thing, never considered nor heard of it before.

Maybe it is just one of those wild rumors.

Mr. McNAMARA. Mr. Keating, I can speak to it with respect to Ford cars and that practice definitely does not exist.

Mr. KEATING. Thank you. That is what I want to know.

And again please understand it was not Ford cars he was talking about.

Mr. GOSSETT. You are speaking from the standpoint of the manufacturer; not the dealers?

Mr. KEATING. The manufacturer.

Mr. GOSSETT. May I offer for the record here, Mr. Chairman, this letter of Mr. Ford's about bootlegging?

The CHAIRMAN. Yes, sir.

(The letter is as follows:)

FORD MOTOR CO.,
Dearborn, Mich., February 24, 1954.

To All Ford and Lincoln-Mercury Dealers:

You are aware of the inroads currently being made in the long-established retail sales practices of the automobile industry by unethical bootlegging of cars and trucks.

In our opinion, no other practice can so quickly and completely destroy your most valuable business asset—your Ford or Lincoln-Mercury franchise to sell cars and trucks.

When a dealer bootlegs a car or truck—makes possible its sale to the retail customer by other than an authorized dealer—he is automatically doing these five things:

- (1) Losing direct contact with the ultimate user of the car;
- (2) Losing the opportunity to service that new-car owner and to build him into a long-time—if not lifetime—buyer of the products, accessories, and services he, the dealer, has to sell;
- (3) Running the risk of having his product appear as "distress merchandise"—in the eyes of the buying public, at least—on used-car lots;
- (4) Undermining the basic principles of automobile distribution which we are constantly seeking to improve and under which so many dealers have prospered for so long; and
- (5) Making it less likely for the customer to receive the full benefit of his warranty and additional services to which he otherwise would be entitled.

To protect the investment of hundreds of millions of dollars you, as Ford and Lincoln-Mercury dealers, have made in buildings, facilities, and equipment; to make certain that the buyers of our products have available to them the services of the 65,000 mechanics and technicians you and we have trained and developed; and to assure yourselves of continuing profits from the sales of the finest line of cars and trucks the industry has ever known—you should discourage bootlegging in every possible way open to you.

We have received a number of complaints directly traceable to our own dealers. We have the names of those dealers. We will deal with each case on an individual basis, in order that the foregoing considerations may be brought to the personal attention of any dealer engaging in the practice.

Bootlegging is not, unfortunately, something new in the automobile business. It has raised its rather shabby head in the past. But, as in the past, I am confident of our ability, working together, to eliminate this or any other selfishly motivated practice which is against the best interests of the customer, the dealer, and the company.

I count on your cooperation.

HENRY FORD II.

Mr. GOSSETT. To continue, the effect of the proposed legislation we think would be to decrease the sales and production of automotive vehicles, it would increase employment in the automotive and supporting industries, and it would set into operation forces that would increase the prices of motor vehicles and service to the public.

This committee is familiar, I think, with most of the steps that have been taken by the industry to solve the problems that beset it.

I shall not describe all of them here. In addition to announcing a new and alternative form of 5-year contract to our dealers, which will be terminable only for cause, we at Ford Motor Co. have established a dealer policy board under the chairmanship of Benson Ford.

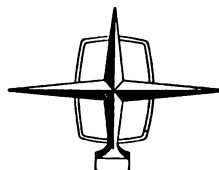
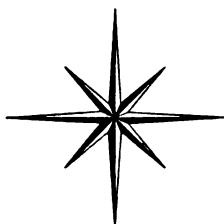
The board will devote all of its time and attention to the improvement of our relations with dealers. To this end it will, among other things, create and maintain clear lines of communication between our dealers and the top management of our company.

Other steps are in the process of adoption. We have distributed forms of Suggestionnaires—copy of which I would like to offer in the record also, along with a copy of a booklet issued by the dealer policy board of the company.

The CHAIRMAN. They will be accepted.

(The documents referred to are as follows:)

FORD MOTOR COMPANY



DEALER POLICY BOARD

Dealers in Ford Motor Co. products are among the company's most valuable assets. Ford Motor Co. management has the important responsibility of helping to keep this asset strong, competitive, and financially profitable. The company and its dealers stand today at the threshold of a new era of growth. If the dealers and the company are to take full advantage of the opportunities that lie ahead, it is essential that both work closely together and maintain constant communication with each other.

HENRY FORD II.

APRIL 18, 1956.

THE BOARD MEMBERS

Benson Ford, chairman

Benson Ford, second son of the late Edsel B. Ford, went to work in the experimental garage at the Ford engineering laboratories in 1940 as part of his father's plan to have him learn all phases of the automobile business. He subsequently transferred to the purchasing department and to the supercharger division of the company. From 1942 through 1945, he served in the Army and the 4th Air Force, advancing from enlisted man to captain, and returned to the company in February 1946. In 1948 he was elected vice president and general manager of the former Lincoln-Mercury division, and early in 1955 he was elected vice president and group director—Mercury and special products divisions. Mr. Ford has been a director of the company since 1941. He continues as a vice president and director, and as a member of the company's executive, administration and product planning committees.

Walker A. Williams

Walker A. Williams is in his 31st year with Ford Motor Co. He went to work for Ford at Kansas City, Mo., in the accounting department, but soon transferred to the sales department. He subsequently was assistant branch manager at Omaha and Kansas City and then branch manager at Salt Lake City and Somerville, Mass. After 21 years of field sales experience, Mr. Williams was appointed Ford sales manager in April 1946, and 3 years later became general sales manager of Ford division upon its formation as a product component of the company. He was elected vice president—sales and advertising—in September 1950, in which position he served until his appointment to the board. He is a member of several industry, professional, and civic organizations and committees. Mr. Williams continues as a company vice president, and is a member of the administration and product planning committees.

Arthur S. Hatch

Arthur S. Hatch brings to the new dealer policy board a broad knowledge of Ford Motor Co. and many years of experience in sales management and dealer relations. He joined Ford at Chicago in 1922 as a sales representative and advanced rapidly in the field sales organization. He served as manager of the Lincoln department in Chicago and as assistant branch manager. In 1929 he was transferred to Detroit as general sales manager for the Lincoln division. After 11 years, he returned to Chicago as branch manager, and was appointed midwestern regional manager in 1943. Two years later, Mr. Hatch was transferred to the west coast as western regional sales manager for Ford division. He resigned that position to become the third member of the new board, but will continue to maintain his headquarters in San Francisco.

Thomas J. O'Neil, dealer policy board associate

Thomas J. O'Neil joined Ford Motor Co. at Memphis in the accounting department, later advanced to the position of controller and transferred to sales in 1926. He was appointed assistant branch manager at Memphis in 1930 and subsequently served as assistant manager at Dallas, and branch manager at Columbus, Cleveland, and Jacksonville, Fla. Later, in 1943, he was named district sales manager at Memphis and held the same position at Indianapolis and Kansas City before being transferred to the general sales office at Dearborn as car sales manager. In February 1951, he was appointed new and used-car sales manager. He served as passenger-car consultant to the Motor Vehicle Division of the National Production Authority in Washington for 6 months in 1952 and in September 1952, was named director of the office of product sales and dealer organization. In July 1953, Mr. O'Neil was appointed executive director, sales and advertising staff.

Duane D. Freese, executive secretary

As a Ford Motor Co. staff attorney, Duane D. Freese has worked principally on company sales matters for nearly 10 years. Mr. Freese is a graduate of the University of Michigan literary and law colleges. He received his A. B. degree in 1935 and his LL. B. degree in 1937. After a short period in private practice, he became secretary and law clerk in the United States District Court for the Eastern District of Michigan. He held this position until 1942, when he entered the Armed Forces as a second lieutenant, Infantry. He served with the Allied Military Government in North Africa and Italy, and just prior to his return was executive officer to the senior civil affairs officer for the establishment of the Allied Military Government zone at Trieste. For his services overseas, he received the British award of the Bronze Oak Leaf Emblem. Mr. Freese left the Armed Forces with the rank of major in December 1945, and joined Ford the following month.

Authority

The Ford Motor Co. dealer policy board was created by authority of the executive committee and will report to that committee and the board of directors. The dealers were advised of the program at a series of meetings held in various sections of the country during April and May of 1956. Addressing the meetings were Henry Ford II, president; Ernest R. Breech, chairman of the board; and Lewis D. Crusoe, executive vice president—car and truck divisions.

Purpose

The principal purpose of the dealer policy board is to establish better communications and improved relations between the dealers and the company.

Membership

The board will consist of three members who will devote full time to dealer policy board activities. Additional personnel will be assigned to the board's staff as may be required. No board member or personnel assigned to the staff will have any direct connection with any car division or with any company sales activity.

Responsibilities

It will be the responsibility of the dealer policy board to familiarize itself with problems of the dealers insofar as they are related to company policies and relationships, and endeavor to solve or bring about the solution of these problems. The board will consider any idea, suggestion, complaint or question that may be presented by any dealer, and will from time to time solicit the opinions of dealers relating to subjects or problems of current importance.

Although formed to function primarily in the field of the living relationship between the company and its dealers, the dealer policy board will review also any termination of that relationship that may become necessary.

Policies and procedures

General.—In its relations with dealers, the board will not interfere with the normal operations of the divisions or their personnel. Dealers will continue their present relationship with division personnel, as in the past, but will also have access to the board for a discussion of any subject that seems appropriate.

The company's management has long enjoyed the aid of dealer councils, for example. The councils have provided a means of communication between the dealers and the company, and have contributed significantly to a better understanding of common problems. In addition, meetings with dealer advertising committee chairmen, councils of dealers' sales managers, service managers and parts managers, merchandising school discussions and numerous other cooperative efforts have served to keep division and central office management informed of conditions in the field. This has resulted in great benefits both to the dealers and the company.

The board, then, will supplement, rather than supplant, existing programs.

Specific.—When the dealer policy board wishes to solicit the opinions of dealers, its solicitation may be in the form of questionnaires, correspondence, or personal contacts with dealers, or by such other method as may seem appropriate to the board.

When a dealer wishes to submit an idea, suggestion, or complaint, he should communicate directly with any member of the dealer policy board. A detailed written report is suggested—although it is not required—so that the board will have an opportunity to study the matter involved prior to any discussion that may follow. In any event, an appointment will be made for a discussion with the entire board, or with one or more of its members, as the chairman may determine. One of the board members will continue to maintain an office in San Francisco.

No sales agreement shall be terminated by the company except upon the prior approval of the dealer policy board. The board will give consideration to the termination of a sales agreement by the company only if such termination shall have been recommended by the general manager of the car division concerned.

Upon receipt of such a recommendation, the board will notify the dealer involved that termination of his sales agreement is under consideration and inform him that he may submit a written request within fifteen days after receipt of such notification for a conference with respect to the recommended termination. In the event that the dealer shall request a conference with respect to such recommendation, the chairman of the dealer policy board will establish the time and place of the conference and so advise the dealer in writing.

When a dealer meets with the board to discuss a recommended sales agreement termination, he shall be privileged to bring with him a partner, a principal stockholder, or any other business associate who in his opinion might be helpful to him at the conference. The dealer and his selected associate may be accompanied also by an attorney if the dealer wishes. The board may invite, at the proper time during any conference or any portion of a conference, car division personnel, or other company representative to participate in the conference.

As soon as practicable after the conference, the board shall decide whether or not the recommended termination of the sales agreement shall be effected and shall notify the dealer accordingly.

THE DOOR IS OPEN

The board members will welcome communications from any dealer at any time. The company hopes that the dealers will avail themselves fully of the new channels of communication established by the creation of the board. The company is confident that with the cooperation of the dealers, its purposes in establishing the board will be realized, and that the good relations that have always existed between the dealers and the company will be improved and solidified in the new era of growth and development ahead.

Ford—Thunderbird—Mercury

THE FORD FAMILY OF FINE CARS

Lincoln—Continental Mark II—Special Products Division

MR. HENRY FORD II, PRESIDENT,
FORD MOTOR CO.
Dearborn, Mich.

Personal

To All Ford Motor Co. Dealers:

It is my personal hope that you will take the time and effort necessary to make—on these pages—any and all suggestions, comments, and criticisms that you think might be helpful in the future relationships between you and your company.

Whatever you have to say will not only be of great assistance to me, personally, but also to the members of the Ford Co. board of directors, the executive committee and the administration committee in the conduct of a business we all hope and expect will be even more successful in the next 10 years than it has been in the past decade.

Your views will have my immediate and personal attention. A full report on what you have to tell me will be made to the board, the executive and the administration committees.

Please use the stamped and addressed envelope in getting your comments, suggestions, and criticisms back to me.

Thanks, in advance, for your cooperation.

HENRY FORD, II.

Dealer comments, suggestions, criticisms:

My franchise (please check) ☐ Ford ☐ Lincoln ☐ Mercury ☐ Continental

My name _____

Name of dealership _____

Address _____

(Identification not necessary—sign only if you wish.)

Mr. GOSSETT. The board will devote all of its time and attention to improvement of relations with dealers. Other steps are in the process of adoption, Mr. Chairman. We have distributed these forms of questionnaires which, as I have said, the dealers are not required to sign and in which they have been asked to make candid comments concerning the improvement of company-dealer relationships. This information and that to be solicited in the future will provide a sound basis for considering what further steps should be taken to improve the relationships.

Over the years, as we understand it, the Congress has indicated a clear policy on legislation dealing with the commerce of the Nation. That policy has been to refrain from enacting legislation affecting commerce unless it is abundantly clear to the Congress, first, that the problem involved cannot or will not be solved in any other manner and, second, that the public interest requires immediate action.

The testimony before this committee raises serious questions as to whether the immediate enactment of the proposed legislation would comport with this policy of Congress, to which I have referred.

Certainly there is no sound basis for hasty action, we think. The consequences may be serious and far reaching.

Conversely, there is much to be gained by more deliberate consideration of such drastic proposals.

In view of the determined efforts that the industry is making to solve its problems in company-dealer relations, we earnestly urge this committee to withhold legislative action, at least until the Congress has had an opportunity to observe for a reasonable length of time the effectiveness of the sweeping changes that have been made and are under consideration in the industry.

THE CHAIRMAN. Thank you very much, Mr. Gossett.

MR. GOSSETT. Thank you, Mr. Chairman.

THE CHAIRMAN. I just want to offer my compliments to you on a very cogent and most illuminating statement. .

MR. GOSSETT. Thank you so much.

MR. KEATING. I join in that, Mr. Gossett. Your presentation has been very helpful.

THE CHAIRMAN. We would like to avail ourselves of your knowledge and skill possibly in drafting some of these amendments.

MR. GOSSETT. We want to be as helpful as we can to the committee, sir.

MR. SCOTT. I agree. May the record show unanimity here?

MR. QUIGLEY. If that is going to be the case, I wish to be on record also.

THE CHAIRMAN. Thank you very much.

Now will those gentlemen whom I mentioned before come forward, Mr. O'Brien, Mr. McRae, and Mr. Holtsinger?

I think you have been on the witness stand before and you had not finished your statement.

MR. O'BRIEN. Yes, Mr. Chairman.

THE CHAIRMAN. You might proceed.

STATEMENT OF ROY E. O'BRIEN, ST. CLAIR, MICH.—Resumed

MR. O'BRIEN. I am not quite sure, Mr. Chairman, where I stopped. I did not make a mark, but if you will recall—

THE CHAIRMAN. I don't remember but you go ahead.

MR. KEATING. Are you Mr. McRae?

MR. O'BRIEN. O'Brien, Mr. Keating.

MR. KEATING. I was absent when you were testifying before. Would you please identify yourself? Are you a Ford dealer?

MR. O'BRIEN. I am a Ford dealer in the St. Clair Shores, Mich., area which is a suburb of Detroit and considered metropolitan Detroit, sir.

I will start here as closely as I can to where I left off.

Another point that disturbs me, Mr. Chairman, is the inference that I brought away with me from these hearings yesterday to the effect that Ford dealers can have no confidence in the Ford Motor Co. and may not rely on the representations of the Ford Motor Co. or their fairness in their relations with the dealer.

In my association with the Ford Motor Co., I have had my differences with them just as with any other business but I have had a full

experience and I know from that experience that I can rely completely upon any representation that Ford makes to me and that Ford will take no actions designed to harm my continued successful operation in my dealership.

The need for any type of legislation in connection with automobile manufacturers and their dealers is indeed a very difficult thing for me to see.

The ultimate outcome would be definite hamstringing of dealers and impairing the potential profits of all dealers.

Speaking for myself, I started some 10 years ago as a Ford dealer with \$50,000 of capital, some of which was borrowed, and have been able with reasonable attention to my business to build my business into a very satisfactory one.

I am definitely against Senator O'Mahoney's bill because in the intense competition in all phases of the automobile business this bill would, because of the fear of litigation, completely alter the satisfactory system of marketing automobiles competitively and would tend to make de facto mail-order houses receiving orders on the one hand and captives of dealers who want to bootleg cars on the other.

This will hurt the manufacturer, the dealer and the public.

If I understand this bill correctly, and if I might digress, Mr. Chairman, for just a moment, I have my own legal personal attorney. I have had him for 10 years since I started as a Ford dealer,

It is a firm of 20 attorneys in Detroit, the name is Dykema, Jones & Wheat. They specialize in all corporation affairs, tax and what have you.

I consult my attorney regularly. I consulted my attorneys, sir, before I went to the Ford meeting called by Mr. Ford in Dearborn, on the 20th of last month. I consulted him on the return from that meeting about the implications of this bill on my business as an individual.

He advised me that I should do everything in my power to kill the bill, to stop the bill, because, as he interpreted the implications in section (e) of the bill, the O'Mahoney bill, the boom for bootlegging would just begin to start.

He told me that if I was getting normally 2,000 cars a year, that I could very well order, say, 4,000, and take the excess 2,000 cars and sell them wherever I chose, and nobody could stop me. And he went further, to say: "If you are intimidated as the result of that action, I would be very glad to defend you."

Mr. QUIGLEY. Would he be willing to defend you on the bad faith?

Mr. O'BRIEN. On the bad faith?

Mr. QUIGLEY. Yes.

Mr. O'BRIEN. As he explained it to me, Mr. Congressman, there wouldn't be any bad faith, because the manufacturer wouldn't have any jurisdiction to tell me that I couldn't get the automobiles and deliver them, as I saw fit.

Now, that was his interpretation. The manufacturer, as he interpreted it to me, would have to fill my orders as I gave them to the car distributor, as we do, as was outlined here previously. We only buy our cars once a month, in advance, we give an estimate for 3 months of our best market conditions.

At the end of last year I had 200 cars on hand, which represented roughly a half-million dollars. And my schedule I made out myself,

or I signed myself, and it was the very best schedule I could make; it called for 300 automobiles in the coming month.

I sell some 2,500 to 3,000 cars a year. I found that conditions had changed. All I did, sir, was to call the district manager of Ford and tell him to cut off a hundred of those cars, and he never argued with me 1 minute.

Mr. KEATING. Is that a general practice? If the dealer has over-ordered, can he call up the company, and say, "Now, I have ordered too many; will you cut them off?"

Mr. O'BRIEN. Mr. Keating, with all the emphasis at my command—I have been a Ford dealer for 10 years, I have been in the business 39 years, I have a boy in this room that is 27 that I hope will perpetuate, take over my business—I am built of a little bit different stuff than to have any manufacturer, Ford Motor Co. or no matter who it is, tell me how to run my business. And nobody at any time has ever told me that I had to take any kind of merchandise, not only cars but parts, accessories, et cetera.

Believe me, I am telling you the truth, so help me. I won't stand for it.

Mr. KEATING. You look as if you wouldn't stand for that, and I commend you for it. But is that general with dealers, so far as you know?

Mr. O'BRIEN. Mr. Keating, to answer that, let me phrase it this way: I believe there are dealers in all walks of life that, if you said "Jump," they will jump. And I do believe that the Ford Motor Co. in its contacts with its dealers has selling techniques, sales promotion—and I concur with them—I take what I want, and I leave what I don't want.

Mr. KEATING. I understand that.

Now, you would be legally obligated under existing contracts, I assume, after you had placed a firm order, if they wanted to enforce the contract you would be legally obligated to take those cars, and if you didn't take them they could sue you, couldn't they?

Mr. O'BRIEN. It never came to that point, and I am not being evasive, sir.

Mr. KEATING. That is what I am getting at.

Mr. O'BRIEN. I had 300 that I signed for, and I bought them—I floor-plan my cars, and my bank would have paid for them.

Mr. KEATING. My question was: If you found that you ordered more cars than you could dispose of, have you ever encountered any difficulty in going to the company and saying, "I have taken too many; will you relieve me?"

Mr. O'BRIEN. No, sir. I have made mistakes, I have bought too many.

Mr. KEATING. My question is, you are a forceful individual, and what I would like to know is whether the company generally has followed a practice, if a dealer has overordered, of permitting him not to go through with the original agreement.

Mr. O'BRIEN. Would you please restate it?

Mr. KEATING. In your discussion with other dealers, is your practice with the Ford Motor Co. in general the practice that they follow with all dealers?

Mr. O'BRIEN. I wouldn't say a hundred percent what the dealers say—I have heard dealers grumble, I have heard them say that the

factory was this and that and the other thing—it seems to be a kind of a prerogative to get in the kitchen and hash over these things and curse somebody. And I have heard that statement; yes, sir. I certainly don't think it is the general practice.

Mr. QUIGLEY. Mr. O'Brien, coming back to the advice your lawyer gave you, we will say you are taking 2,000 cars and this law passes, and you suddenly start ordering 4,000. Ford Motor Co., naturally, wonders what you do with the other 2,000 additional cars, and they investigate and they find you are bootlegging 2,000.

I don't know whether Ford Motor Co. would ask me for a legal opinion, but I wouldn't hesitate to advise them that they do not have to supply you with those 2,000 extra cars, and if they did refuse to supply you with those 2,000 cars and you decided to sue, I would be happy to defend Ford Motor Co. on the defense of your own bad faith.

Mr. O'BRIEN. Of course, I am not a lawyer, Mr. Quigley, and the only thing I am going on is what my personal attorney told me.

Mr. QUIGLEY. I think his advice is sound as far as it went, but I think there is more to this bill than what you have indicated in your testimony.

Mr. O'BRIEN. Well, doesn't that bring up a point of what a manufacturer can do as a result of the proposed legislation, versus coercion and intimidating a dealer, or not giving him what he ordered—that is the point I am raising.

Mr. QUIGLEY. The basic question involved, as I see it, is simply one of good faith. I think Ford Motor Co. has every right to continue to put sales pressure on all of its dealers to sell more cars—

Mr. O'BRIEN. They put it on.

Mr. QUIGLEY. And I think they can continue to do that, even after this bill is enacted, if it is enacted. But I don't know that they should have a right to cancel you out or terminate you in bad faith as a dealer, having a right to have your day in court.

Mr. O'BRIEN. Even though it was bootlegging?

The CHAIRMAN. The Attorney General has testified this morning that no one should seek to prevent bootlegging. Because if they do, they are violating the antitrust laws.

Mr. O'BRIEN. Yes.

What is going to happen, Mr. Chairman, if a certain segment of dealers—and seemingly there are many very alert in the field—elect to take advantage of this thing that my attorney brought out, and go out and sell cars promiscuously throughout the country, even to foreign countries—and I turned down an order for 500 for Europe, I could have made \$50 a car, and never touched them—

The CHAIRMAN. I am just giving you the Attorney General's point of view, which is as follows:

For a manufacturer to terminate, cancel, or even refuse to renew a franchise because of a dealer's bootlegging, or which might have been carried on with the dealer's cooperation, transgresses the antitrust laws.

That is the testimony this morning, and I believe he is right.

Mr. O'BRIEN. If he bootlegs?

Mr. MALETZ. Yes, that is right.

The CHAIRMAN. If he bootlegs; yes, sir.

There is nothing unlawful about bootlegging, as we understand it.

Mr. O'BRIEN. That is what I understood, that there is nothing unlawful about it. That is the point I am making, sir.

The CHAIRMAN. I thank you.

Mr. O'BRIEN. I think we are in accord, then.

Mr. SCOTT. The transgression of the antitrust laws, as I understand it, would occur if there had been a prohibition of bootlegging, would it not? If somebody tried to stop it, they would transgress the antitrust laws.

Mr. O'BRIEN. Yes. That is what my attorney told me, sir. That is what my attorney told me.

The CHAIRMAN. Go ahead. We understand each other.

Mr. O'BRIEN. If I understand, the manufacturer might face constant litigation on the part of the dealers if the factory representative would try to encourage the dealer to expand his dealership operations and sell more units. This might be coercion.

For my part, I have profited from the salesmanship, the helpful incentives which the Ford organization brought to me. Some I accept—

Mr. KEATING. If you have been told that it would be coercion just to use ordinary sales practices to try to get you to take as many cars as you can, in my judgment that is silly. That is not coercion.

Mr. O'BRIEN. I will have to agree with you, Mr. Keating. But as I understand the Wagner Act in connection with labor, the interpretation that my attorney gave me was that coercion meant for an employer to say to an employee, "You do this or do that," in the very mildest of tones, due to the fact that the power came from the employer to the employee.

Mr. KEATING. Didn't we ask Mr. Gossett to prepare us some proposed language which would make it abundantly clear that any motor company could use ordinary sales tactics to convince the dealers that they should take as many cars as they can sell? We would not want certainly to interfere with that. It is a fundamental bedrock of our free enterprise system.

The CHAIRMAN. That could not possibly be coercion. I cannot conceive of it.

Mr. O'BRIEN. I do not know, sir. I am not that learned. Believe me.

The CHAIRMAN. Go on with your statement.

Mr. O'BRIEN. It is a great word, and I wish I could define it.

The CHAIRMAN. I just want to say, sir, that Senator Monroney has just entered the room, the distinguished Senator from Oklahoma, and next witness, and we will have to keep moving along.

Mr. O'BRIEN. I will read it right through, Senator.

The need for any type of legislation in connection with automobile manufacturers or dealers is very difficult for me to see.

On the other hand, this bill would also appear to leave the manufacturer at the mercy of a bootlegging dealer who orders units far beyond the normal demands of his dealership area. Even if the factory knows that such a dealer intends to bootleg the excess, any attempts by the manufacturer to discourage such orders or to refuse to fill them would seem to me to be an act of coercion or intimidation under the terms of this bill.

The word "coercion" and the word "intimidation" certainly have never played any part in my association with the Ford Motor Co.

It is true that at times there have been differences of opinion, but never at any time has anyone, as far as I have been able to interpret, coerced me as a dealer, and certainly I would not have put up with it if they did.

One of the major attractions that led me to seek a Ford dealership and to continue in the business is the fact that this is a fast moving business and highly competitive. Nevertheless, it is a business that gives to a dealer the kind of freedom to run his operation the way he wants to, to gamble big, to profit big, and to back his judgments without interference.

I think that both the manufacturer and the dealer have an important common factor. They are both businessmen who, in the nature of their business, must assume great relative risks.

It is nonsense to assume that a Federal law ought to guarantee a good living to every kind of dealer that has a franchise. It is further nonsense to assume that the factories, who can only market through their authorized dealers, are going to be such poor businessmen as to hurt their dealers.

I am confident that I would suffer in my own dealership if a Federal law prevented the factory and its highly competent personnel from engaging with me in the give and take of a market season and substitute for that a situation which would put me and all other dealers in one legal trench and the factories in another, kind of afraid of one another.

Frankly, as a businessman, I see the handwriting on the wall. If this legislation is enacted, then because of the elements of uncertainty that it raises in the automobile business, higher prices are bound to result. As a seller of automobiles to the public, that is going to hurt me.

I employed counsel—I covered that.

I have had considerable business experience, and it is not necessary for me to continue with the Ford dealership. I could go into other lines of business without much difficulty, but after investigating many other businesses, I have found none that have had the appeal from the point of view of the keen competition and profit obtainable as my Ford dealership.

From the start, I recognized the highly competitive nature of this business that I am in, and this is the part of the business that I like the most. The freedom to have your own business, to run it as you see fit, is an exciting game which involves a gamble, but it is the kind of business that if you devote yourself to it and if you are willing to back your judgment and set your goals high, the rewards are wonderful.

I say to you gentlemen with all sincerity that I hope and pray that you will not impose Federal legislation on the automobile business.

Keep in mind that some very far-reaching and favorable changes in the relationships between the factories and their dealers have already been accomplished voluntarily. And Mr. Gossett, the counsel for the Ford Motor Co., was certainly right when he said we formerly got 60 percent of paid labor for warranty and now we get 100 percent, and in my operation it makes a difference of some \$25,000 a year. That is one item. That is one item in my operation. I have service complaints, but I try to keep them to a minimum.

This will be done, as it has been done in the past, by a more frequent discussion of the problems between dealer and factory. In my view, it would be a major tragedy if stifling Federal legislation were passed when it is not needed, and it would result in a lower volume

of production, a higher cost per unit and the lessening of competition between manufacturers and their dealers for consumers' dollars.

Do not be misled. Any dealer worth his salt has the right to say no to any suggestion made to him by the factory outside of the terms of the contract. I have said no on many occasions, and I would hate to think that this legislation is urged because members of this committee assume a dealer cannot say no. Thank you very much.

The CHAIRMAN. Thank you.

Mr. McRae.

STATEMENT OF WALTER A. McRAE, JACKSONVILLE, FLA.

Mr. McRAE. My name is Walter A. McRae. I am president of the Duval Motor Co., a Florida corporation. Next month the company will complete 40 continuous years as a Ford dealer.

Mr. KEATING. In what city is that?

Mr. McRAE. Jacksonville, Fla., sir.

I personally have been with the company since January 3, 1921. I am also president of the North Florida Motor Car Co., Jacksonville, Fla., another Florida corporation, handling Lincoln and Mercury motorcars. That was incorporated in 1946.

I have served on the National Automobile Dealers Association board of directors in Florida for 2 years, having completed my term of service early in 1956. I was serving the unexpired term of J. Saxton Lloyd, of Daytona Beach, Fla.

I have consistently been against Government control of the automobile business, and have voted accordingly at all NADA meetings. The only exception was the permissive legislation introduced at the last session of Congress which would enable a manufacturer to include in his sales contract power to curb bootlegging. That bill passed the House but not the Senate.

Attending a hearing of this committee, I was amazed at the implication that some Ford dealers had been brainwashed by the Ford Motor Co. which paid their expenses to Detroit. I deeply resent this insinuation that anyone of the Ford Motor Co. or anyone else could purchase my views on any matter.

According to the Automotive Daily News of July 2, 1956, Admiral Bell referred to the Ford dealers who opposed this legislation as puppets. I think this is rather strong language to use and personally I deeply resent it. It seems that under our American system of government, we can differ with somebody without having this type of statement made by anyone.

It is true that in my long experience with the Ford Motor Co. we have had some differences of opinion—some of them rather severe. However, we have been able to resolve them without any legal fights—without any help from the Government.

In my opinion the Ford Motor Co. has made some rather costly mistakes to themselves as well as to the dealers over this long period of time, and I have contributed many mistakes of my own and I feel that both of us will make some mistakes in the future.

I realize fully that this committee is trying to do something in the way of legislation that will improve the present condition of automobile dealers, but I am confident that any problems we have today are not going to be cured by legislation.

I am one of the dealers who think that Government has no place in business. I would rather take my chances under the same system we have been working under for a great number of years which has been very profitable to our company over a long period of time. I feel very strongly that the economic situation will take care of the future.

Being an automobile dealer, in times like they are now, is a highly specialized business and takes a man with a thorough understanding of these many problems, with a real desire to work hard and make a success.

In my own opinion there are too many "honeymoon dealers" in this business today. By "honeymoon" I mean they have been appointed as dealers since the war when there has been no real selling problem until late in 1953.

The impression before the committee is that the NADA had the unanimous authority of its 30,000 dealers to push this particular bill through Congress in a hurry. I know this is incorrect because I know that many of them don't want any type of Government interference or control of their business.

The CHAIRMAN. Mr. McRae, at the time the National Automobile Dealers Association board of which you are a member passed the resolution in favor of the bills, were you present at the time?

Mr. McRAE. Congressman, you said was I present at the NADA meeting?

The CHAIRMAN. Yes. I mean the board of directors meeting.

Mr. McRAE. Yes, sir; I voted against Government regulations in every one except with permissive legislation at any meeting I attended at NADA.

Mr. KEATING. Were you a member at the time they endorsed this legislation?

Mr. McRAE. No; I understand that was at the June meeting and I was not.

Mr. KEATING. You were not a member at that time?

Mr. McRAE. No, sir.

The CHAIRMAN. You were not a member of the board at that time?

Mr. McRAE. No, sir. Every meeting I ever attended I voted against any Government regulation of business. I am very consistent on that anywhere. I don't like Government control.

In my opinion the vast majority of dealers in this country do not know the real meaning of this bill.

In my opinion, section (e) of Senate bill S. 3879 would create the greatest hazard to the automobile business of anything that has ever happened since the business began. Frankly, I think it would be hard for any company to operate with that provision in the bill. It certainly would be a legal paradise for many attorneys.

I also object to this as class legislation, because it singles out the automotive industry and does not apply to other industries like the appliance industry with which the automotive industry competes for the consumer's dollar.

It would be the same thing as two football teams playing on the same field but each with a different set of rules from the other.

At the hearings yesterday, I drew the inference that there was something you had to apologize for being a Ford dealer.

This is another thing that I deeply resent because I not only have been a Ford dealer a long time—I am very proud of this association with the company over this long period of time.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. McRae and Mr. O'Brien.

Do you wish to say anything, Mr. Holtsinger?

MR. HOLTSINGER. Yes, sir; I have a statement.

The CHAIRMAN. Proceed.

**STATEMENT OF GEORGE M. HOLTSINGER, FORD DEALER OF
TAMPA, FLA.—Resumed**

MR. HOLTSINGER. I have been a Ford dealer in Tampa, Fla., continuously since May 20, 1928, operating under the firm name of Holtsinger Motor Co. I am president and the executive officer of Holtsinger Motor Co.

I have carefully read the O'Mahoney bill, S. 3879, as amended by the Senate, in which the double damage provision was eliminated and compensatory damages, plus suit costs, substituted.

It is my sincere opinion that in the long run, if this bill is enacted into law, it may prove more harmful than helpful to the dealers. It is my opinion that if the bill is passed, the factories would have to rewrite their franchise agreements and every provision of the contract would have to be spelled out in great detail, thereby proving very technical, and the provisions could prove quite exacting.

It is my opinion that the future of the automobile business, as far as factories and dealers are concerned, will have to be worked out on a mutually satisfactory and cooperative basis between the factory and the dealer.

I do not feel that this can be accomplished by law. I feel that enough mistakes have been made by both the factories and the dealers, and from the experience gained in the past situations the factories and the dealers will be able to work out their problems through dealer councils in a much more satisfactory basis to both parties than by trying to resolve the association by law.

I am opposed to the enactment of bill S. 3879 and H. R. 11360, as amended. Signed "G. M. Holtsinger."

The CHAIRMAN. Thank you very much, gentlemen.

MR. McRAE. Congressman, could I just inject one thing to back up this Government-control thing?

The CHAIRMAN. I beg your pardon?

MR. McRAE. I have a very good illustration of what this Government control means to a dealer.

The CHAIRMAN. You want to state it now?

MR. McRAE. Yes, sir; I don't like the bill because it's going to put us under Government control again.

Now in my town I operate two dealerships, one of them is a Ford dealership.

The Wage and Hour Division of the Government rules that Ford dealership has to operate under wage and hours.

I operate a Mercury dealership and they rule it does not.

The CHAIRMAN. Of course I cannot conceive how this puts Government in control of the automobile dealers' arrangements. The Government is not in control here at all.

Mr. McRAE. You are making the rules of the road in the future, that is what you are doing, and who is going to be the referee, the Federal judge?

The CHAIRMAN. All we do is give the dealer the right of suit, to sue the manufacturer, that is all, and you only do that when there is not present good faith.

There is no Government control involved.

Mr. KEATING. It is not helpful—this criticism is not directed particularly at you, Mr. McRae, but it is illustrated on both sides—it is not helpful at all to legislators who know very little about a particular business to have people saying that this bill is going to result in Government control.

I agree with the chairman that is just scare language to say that this bill results in Government control of the automobile industry.

On the other hand, the statements made to me in perfectly good faith by the proponents of the legislation to the effect that everybody else can sue now except the automobile dealers, that they are the only ones that don't have the right to bring an action in court, is equally extreme and farfetched.

Neither one of those things are helpful when we are trying to arrive at something here, but I must say I agree with the chairman that you don't need to be concerned about Government control of the automobile industry.

There is not anything that I would be any more opposed to than that.

I could not stand for that, but that is not this bill.

Mr. McRAE. Mr. Keating, I don't believe when the wage and hour law was enacted years ago that the same people that authored it and voted for it meant for it to control business that operated wholly within States but they are doing it, sir.

Mr. KEATING. Well, the wage and hour law was to a degree injecting the Government into all business and was to meet a situation which it was felt was necessary in the trend of the times.

We are not living where we were 50 years ago and situations change, and it may very well be that the situation in the automobile industry is such that it needs some kind of legislation, but certainly anything to give the Government control over the automobile industry would be nothing I would support or a majority of the Congress, in my judgment.

Mr. McRAE. That is what you are heading for because it will be a wedge to do this on down the road.

Mr. KEATING. That is where you and I differ.

Mr. McRAE. We sure do.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. RODINO. I want to ask one question, Mr. Chairman. Mr. McRae, if you were convinced there was no Government control here, would you be in favor of such a bill?

Mr. McRAE. No. I cannot reconcile myself to think why are you going to pass a bill here if it is not Government control. You are Federal people, not State people. Your interest is certainly Federal and not State.

The CHAIRMAN. Thank you very much, gentlemen.

The Chair wishes to put in the record a statement by the distinguished Senator from Michigan, Senator Charles L. Potter.

(The statement of Hon. Charles E. Potter, a United States Senator from the State of Michigan, is as follows:)

STATEMENT OF SENATOR CHARLES E. POTTER (REPUBLICAN, MICHIGAN) H. R. 11360 AND S. 3879

I wish to thank the committee for this opportunity to express my views on H. R. 11360 and S. 3879, as amended by the Senate.

I am opposed to passage of both of these bills.

The expressed purpose of the legislation is to protect franchise automobile dealers. I have no doubt that the sponsors sincerely believe their bills would correct an imbalance. I agree that the cause of any abuses against dealers must be removed. To that extent I commend the motives of the sponsors.

These two bills, however, are deceiving. At first glance, it would appear that they benefit the dealers, but the exact opposite is true. They strike at the dealer's very livelihood. If I were a dealer, I should be apprehensive about this legislation. I should consider it a threat to the stability of my business.

Serious as this is, there are other objections even more fundamental:

1. This legislation, if enacted, would harm the consumer. It sweepingly includes all automobile dealers, regardless of type. Therefore, it extends its protection to the corrupt fraternity of bootleggers which has arisen in recent years to pirate the business of legitimate dealers and mulet the public.

The proposed legislation, in effect, undermines the consumer's best interest by giving legal status to auto bootleggers. A bootlegger could make the manufacturer pay double for an alleged lack of good faith. As I stated when I opposed S. 3879 on the floor of the Senate on June 19, "This bill freezes auto bootleggers into business and leaves the consumer out in the cold."

2. It would aggravate automobile unemployment. Almost a quarter of a million people in Michigan, laid off by the automobile and related industries, are subsisting on unemployment benefits or nothing at all. This legislation would further victimize them. Any attempt to regulate the automobile industry by Federal action would depress automobile sales and invite further drastic lay-offs. I shall virogressly oppose any bill which works to the disadvantage of Michigan's labor force.

3. The manufacturer-dealer situation has noticeably improved, as emphasized by the Senate Judiciary Committee report on S. 3879. The report stated, "Recent developments in connection with the automobile-dealer franchise indicate a willingness on the part of the manufacturer to create an enforceable bilateral contract."

If the Senate committee has found this true, what need is there for legislation? Manufacturers and dealers are now arranging longer term franchises. Special appeal boards are handling dealer grievances. These new attempts by the industry to set its own house in order have come as a result of extensive hearings. The Senate report states that they appear to be working well. However, they have not been in operation long enough to really demonstrate their long-term effectiveness. Let's give these new mechanisms a reasonable chance to develop before we complicate the picture with Federal legislation.

4. The good-faith requirement of these bills is one-sided. Again the consumer is left out in the cold. Mutuality is necessary, not only in the interest of fairness, but to overcome basic constitutional objections to the bill.

Dealers also have a responsibility to act in good faith. Recent hearings have shown evidence of false advertising, misrepresentations, price packing, overcharges for financing, insurance, and other services. If the manufacturer is required to show good faith to the dealer, the dealer should be likewise required to show good faith to the consumer.

5. This legislation threatens free enterprise. In the words of the Department of Justice, it would hinder competition by depriving "newcomers of their fair chance to enter the auto dealer business and, in the process, seriously restrain distribution of new cars."

6. This bill singles out one industry, automobiles. The Department of Justice historically has opposed legislation aimed at a single industry, a position generally found to be sound.

7. A Department of Justice report on S. 3879, dated June 13, 1956, stated that the legislation may raise constitutional problems because it may retroactively affect contracts already negotiated.

Any one of these 7 objections is serious. Taken together, they make the legislation unsupportable by fairminded men. When S. 3879 was debated on the

floor of the Senate, it was apparent that those who pushed it through expected the House to iron out the inequities and kinks in the bill. The House would have to work a long time to erase all the injustices contained here.

The committee would be well advised to table the bill now and devote its time to legislation the country needs.

The CHAIRMAN. The Chair also wishes to place in the record a statement by one of our colleagues, Representative E. Y. Berry, of South Dakota.

(The statement of Hon. E. Y. Berry, a representative in Congress from the Second Congressional District of the State of South Dakota, is as follows:)

STATEMENT OF REPRESENTATIVE E. Y. BERRY

Mr. CHAIRMAN: I am E. Y. Berry, of the Second Congressional District of South Dakota.

I wish to thank you for the opportunity of appearing before you in support of S. 3879. This bill would supplement our antitrust laws by providing automobile dealers throughout the country, what amounts to the privilege of their day in court.

Many automobile dealers in South Dakota have contacted me urging passage of this bill and have outlined the reasons why this would be beneficial legislation not only to the automobile industry but the entire national economy. I have evaluated their requests and find them to be based on sound facts that merit careful consideration by the Congress.

In the United States today there are only five passenger-car manufacturers. Three of these companies produce in excess of 95 percent of all automobiles sold in the Nation. There are approximately 40,000 franchised automobile dealers selling the production of the 5 manufacturers.

Evidence has been submitted to Congress and widely publicized throughout the country that some of the principal automobile manufacturers have exerted great pressure on some dealers to accept cars, parts, and accessories which the dealers have contended were in excess of their market needs. Automobile dealers have an average investment nationally of about \$100,000 but some dealer witnesses have testified they cannot run their businesses independently but are controlled by the factory in almost every phase of their operations.

The relationship between factory and dealer is obviously a conflict between parties of totally unequal economic power. Dealers are usually completely dependent on the manufacturer for their cars. The threat of franchise termination hangs over the dealer like a sword of Damocles and enables the manufacturer to control the dealer to a point which is probably not in the best interests of the country. The dealer is oftentimes a "captive" because his capital is tied up in inventory.

I have never believed that the Federal Government should unduly regulate private industry, but should serve only as a referee. I subscribe to the objective of achieving "less government in business, and more business in government."

I do feel, however, that the Federal Government has the responsibility of protecting the basic rights belonging to all segments of our population whether they be employer or employee, farmer or businessman, or automobile manufacturers and their dealers by giving to them the opportunity of being heard in court in the event their property rights and contract rights are infringed upon. It is on this basis I testify in support of this bill to require the automobile manufacturer to act in good faith in all transactions with dealers.

In my estimation, this bill does not infringe on the rights of the factory or its representatives. It requires the manufacturer, its officers, employees and agents to operate in such a manner that the dealer will not be coerced. It is only fair that a dealer be able to bring suit against a manufacturer who fails to act in good faith in performing or complying with any of the terms of the franchise or in terminating the franchise with the dealer without good cause. The right to court review specified in the bill would exist irrespective of any franchise provisions to the contrary.

The bill insures a basic American legal principle by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover twofold damages sustained by failure of the manufacturer to act in good faith.

I appreciate this opportunity to appear before your committee. Thank you.

The CHAIRMAN. Senator Monroney.

**STATEMENT OF HON. A. S. MIKE MONRONEY, A UNITED STATES
SENATOR FROM THE STATE OF OKLAHOMA**

The CHAIRMAN. We are very happy to have you before us, Senator. It must feel like coming home when you come over to this side of the Capitol.

Senator MONRONEY. It does feel like home to be here. The only advantage I can see to the other side is that you only have to run every 6 years instead of 2. But you miss a lot of the 5-minute debates, which are not in order over there.

Chairman Celler, and members of the House Judiciary Committee, I want to thank you for allowing me to appear before this subcommittee in support of the Celler bill, H. R. 11360, which I believe will do much to put freedom back into the small-business free-enterprise segment of the automobile industry. I also want to compliment the members of this subcommittee on their thorough, judicial, and intelligent consideration of this problem.

You have heard from all segments of the industry and from consumer groups, and that is as it should be. These witnesses have been all sincere, conscientious men who speak their mind with a great deal of force and persuasiveness. The various witnesses who have testified before you—Admiral Bell, of the National Automobile Dealers Association; Mr. Huffstader, of General Motors; Mr. Gossett, of Ford; Mr. Halvorson, of the National Grange; Senator O'Mahoney and myself—have spent so much time during the past year in various congressional hearings, this seems like "old home week."

Mr. KEATING. I think this is the same spirit of cooperation we find in "old home week."

Senator MONRONEY. But even in "old home week," with relatives present, we sometimes have disagreement over whether the Yankees or Washington are going to win the pennant, or something like that.

But it's a real pleasure for me to get to do the talking for a few minutes instead of the listening.

Indeed, I wonder if any question has in recent years had such full, complete, thorough painstaking congressional study as has the problem of the relationship between automobile dealers and their manufacturers. The first recent congressional hearings on this problem took place in the summer of 1954 before a subcommittee of the Senate Interstate and Foreign Commerce Committee, of which I was a member. No legislative action was taken at that time, because we did not consider that we had gathered enough facts and knowledge in the short hearings to effectively deal with the problem legislatively.

However, it was quite apparent that a serious problem did exist, and it was a problem that not only affected automobile dealers and manufacturers, but the general public—the 70 million people who drive cars in the United States—as well. Anyone could recognize this problem as it grew worse through 1954 and 1955 just by reading the newspaper advertisements screaming of obviously false, misleading and deceptive "deals"—price "packing," finance "packing," trips to Europe, blitz sales and "loss leaders." Public complaints became more and more prevalent.

Consequently, Senator Warren G. Magnuson, Chairman of the Senate Interstate and Foreign Commerce Committee, appointed a subcommittee to make a thorough study of automobile marketing prac-

tices composed of myself as chairman, Senator Strom Thurmond of South Carolina and Senator Frederick G. Payne of Maine.

Because of the tremendous impact of the automobile industry upon the national economy, the subcommittee determined that a careful background study should be undertaken before hearings were held and legislation considered, and we proceeded to do just that for nearly a year. Our background study was very fruitful in giving us the proper perspective.

We found that the investment of the automobile manufacturers in the United States amounts to approximately \$7½ billion and manufacturers employ about 780,000 persons. The total investment of franchised dealers is estimated to be nearly \$5 billion and automobile dealers employ about 667,000 people. These dealers employ nearly 10 percent of the total retail employment in the United States. More striking than the above facts, is the fact that about 15 percent of all retail sales in the United States in the year 1954 were automobiles.

Beyond these cold, hard facts, the subcommittee came to recognize that the continuous service by the traditional pattern of family-owned dealerships, in many cases now operated by the third generation, is an example of small business free enterprise in the true American tradition. Furthermore, keen competitive merchandising practices by the automobile dealers of America had been a major factor in the building of this mass production industry. Without mass sales, mass production is impossible.

It became readily apparent to the subcommittee that there was a great deal of conflict of opinion as to whether the problems in the marketing of automobiles were widespread or simply the complaints of a few automobile dealers who could not brook the tide of free competition in a buyer's market. Each manufacturer maintained that its own particular dealers were perfectly happy.

The manufacturers repeatedly claimed in conferences with the subcommittee staff that just a few malcontent, disgruntled dealers made all the noise, and that they represented a very small percentage of the total.

Partially because of this conflict of opinion, and partly because the subcommittee felt it should develop first-hand information, we prepared and sent questionnaires directly to each automobile dealer insofar as this was possible. This was done in September 1955.

As of January 1, 1956, the subcommittee had received approximately 19,500 returns. I believe that this is the most complete expression of dealer opinion that has been collected. It is probably the largest percentage of questionnaire returns ever received by a congressional committee on a voluntary basis.

A large part of this surprisingly strong response may have been due to the fact that the subcommittee assured the dealer that his identity would be kept in the strictest confidence, and the dealer was requested but not required to sign the questionnaire. The failure of nearly one-fourth of the dealers to sign the questionnaire, although they were interested enough to complete and return it, has the greatest significance.

Not content, however, to rest on the returns of the questionnaires, the subcommittee members and its staff have traveled thousands of miles talking to hundreds of dealers in person regarding their prob-

lem. This procedure was almost essential in view of the fear of retaliation by zone and district personnel that has grown up in the business.

In my personal meetings with dealer groups across the country—and I made every attempt to keep them representative of all types of dealers—the first question asked me was, in many cases: “Will this be like dealer-council meetings where the zone manager knows everything we say by the time we get home?” Assured that such was not the case, the dealers would openly and frankly tell of abuses, discrimination, and downright threats which would shock anyone concerned with the American ideals and heritage of freedom.

I understand that the results of our dealer questionnaire have been placed in the record, so I will dwell no further upon the fact that dealers requested Federal study or legislation by a margin of 7 to 1, and I need only refer to the fact that the primary reasons for bootlegging, according to the dealers, were overproduction and pressure from the factories to take more cars than they wanted. Incidentally, I urge the members of this subcommittee to refer to our January 19th report to determine how the dealers of their own States feel about these problems.

With this preliminary work done, the committee opened hearings on January 19th—

The CHAIRMAN. Will you permit an interruption there?

Senator MONRONEY. Yes, sir.

The CHAIRMAN. Do you in the latter part of your statement indicate whether or not those dealers were limited to any particular company, or do they involve both Ford and General Motors?

Senator MONRONEY. Involved those, and we have the breakdown of the dealers answering these questionnaires, and I think it has been made a part of the record, but I would be glad at the proper time to insert them again.

Mr. KEATING. I think it would be helpful to have that in the record.

The CHAIRMAN. It would be very helpful.

Senator MONRONEY. We keyed these questionnaires as to whether they were Ford, General Motors, Chrysler, or independent dealers. We keyed them as to metropolitan, country and medium-sized towns. We put them on IBM machines so we could run them through and tell exactly how the dealer in the big city, small city, and the middle-sized city felt, how the dealers for General Motors, Ford, and others felt. And we have those completely broken down as to the way those dealers felt—whether there was need for Federal investigation or legislation.

The CHAIRMAN. Would you state at this time on the basis of your breakdown whether the Ford dealers also were subject to coercion and intimidation?

Senator MONRONEY. The figures on the Ford Co. I think I have here. I will give them to you right at this time, because I think it is quite significant, because so much has been said about the Ford dealers not desiring any kind of legislation, and resenting the interference of the Government to any degree.

The key question was whether they felt there was need for congressional study of Federal legislation in regard to automobile dealers' problems in the field of automobile marketing. Of 3,169 Ford dealers,

2,093 answered, yes, that there was a need for Federal investigation, or legislation; 499 answered, no—that is 4 to 1—499 answered no; 577 either didn't answer or answered equivocally.

It is also significant that the highest percentage of those failing to sign the questionnaires among the big dealers, was among the Ford dealers and the Lincoln-Mercury dealers: 1,157 of the 3,849 Ford Motor Co. dealers, nearly 1 out of 3, failed to sign. Dealers of other companies failing to sign were as follows: General Motors 27.1 percent, Chrysler 19.1 percent, Studebaker-Packard 16.7 percent, American Motors 15.9 percent.

In the Lincoln-Mercury field, the dealers answering yes, there was need for thorough investigation or legislation, were 776; and no, only 134; 137 did not answer and 33 answered equivocally.

On the question regarding overproduction, 1,986 of the 3,169 Ford dealers and 723 of 1,056 Lincoln-Mercury dealers felt that was the primary reason for bootlegging and 1,755 Ford dealers and 568 Mercury dealers out of those numbers considered pressure from the factory to be the primary cause of the bootlegging.

We have those for General Motors, which I would be glad to—

Mr. KEATING. Could you give us those for General Motors while you have them right there?

Senator MONRONEY. 8,276 General Motors dealers voluntarily replied to the questionnaire; 6,047 of them indicated they felt there was need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing; 860 felt there was no such need. That is about 7 to 1. The remainder either did not answer this particular question or answered miscellaneously; 4,069 indicated "pressure from factories to take more cars than needed" was one of the primary causes of bootlegging.

Mr. KEATING. Now, Senator, was that question worded, "A need for Federal investigation or legislation"?

Senator MONRONEY. The question read exactly this way: "No. 1"—that was the first question:

Do you feel there is need for congressional study or Federal legislation with regard to automobile dealers' problems in the field of automobile marketing?

I might add that in addition to answering it overwhelmingly, and the total count was 19,113 when we had to "cut off"—this is all dealers—13,749 felt there was need for congressional study or Federal legislation; only 1,991 answered, no, and 3,181 gave no answer, and other answers, 192.

Now, in addition to voting this way, the committee received hundreds of postscripts and addendums to our questionnaires which made very interesting reading and raised very important questions on the problems. It was one of the broadest sections of the voluntary reaction from the automobile dealers as to their problem—reflecting the impossibility of correcting under the *laissez faire* policy these problems that had existed before the time of the Federal Trade Commission's report in 1938, which found almost identically the same set of circumstances that exist today.

It is very important, I think, that the principal problems outlined in the answers to our questionnaire existed in 1938 and were found to exist almost in identically the same way.

Mr. KEATING. If you would agree with me that undue weight should not be put upon a questionnaire, in other words, that is only one factor in our determination, but insofar as we put weight on it, would you not agree that this legislation before us, particularly as it has been amended or amendments have been suggested, is about as mild a form of legislation as anything could be. To be more specific, it does not have nearly as many teeth in it as the so-called Monroney bill?

Senator MONRONEY. I quite agree with you, sir. I cannot see how in any way the scare, hobgoblin claims that have been made against this bill and that were made on the floor of the Senate and that have been made in the testimony of the dealers—fear of Federal control—apply in any way to the O'Mahoney bill. In fact, the way the bill was amended in the Senate to eliminate the double damages, to merely give the dealer the right to sue the factory in a court of Federal jurisdiction for bad faith in complying with a one-sided contract that is heavily loaded in the factory's favor seems very mild. Now, the dealer has not got any legal staff to go into court with, but the dealer still wants this chance. He signed that contract, and the general form of the contract allows either party to cancel on 90 days' notice.

Now, surely, that is easy. You say, that is mutuality, because either the dealer or the factory can cancel.

If the dealer is canceled, he is out of business. He cannot pick up another good line. He cannot pick up General Motors tomorrow. He is out of business, and a lifetime of savings and capital investment are washed out.

If the factory cancels on this 90 days clause—for any reason it chooses to—it has administered an economic death penalty to that dealer, and he is at the mercy of the factory on the liquidation of the assets that he has been told to build up—he has been supervised as to the location of the sales room; he has been told the kind of building to buy and to build and to design; he has been told the tools he has to buy and the quantities of cars he must keep on hand.

But he has no appeal because he has signed away his rights in agreeing that the contract can be canceled on 90 days' notice.

But if he wants to be a dealer, he has got to take that contract. And it is just as much a one-sided contract as the old "yellow dog" contract used under the labor policies that required an employee to sign away his rights ever to join any union organization of his own choosing.

Mr. KEATING. Now, what do you say about the extension of this same principle to other lines of industry where there is a similar situation in which, it might be said, that parties are not dealing on an equal basis so far as bargaining power is concerned. An illustration might be the oil companies and the gasoline stations?

Senator MONRONEY. Frankly, I see nothing wrong in that if the study has indicated that: 1, they have such a vital importance to our national economy to require that; No. 2, if the concentration of economic power is as great as in this case, where 95 percent of the automobile market is filled by 3 manufacturers. This give no mutuality of contract or mutuality of bargaining between the free enterprise segments of the automobile industry and the Big Three, and these men are actually not free buyers in a free market. They are captive buyers. To get the product that they must sell—the product for

which they build a reputation in merchandising in that town—they must accept almost in toto whatever demands are made upon them by the factories.

Now, this bill, as I say, does not change the contracts; it does not provide for Federal regulation. It merely gives the automobile dealer the right to sue for damages actually sustained for bad-faith performance of a one-sided contract. And certainly, I do not know how you can give less to 42,000 independently owned, independently managed, independently operated free-enterprise companies scattered over the United States than just the right to go in court and take a bad contract and try to prove bad faith and recover whatever damages they can prove.

I have enough confidence in the courts to feel that they are going to administer this wisely. Good faith is a well-defined term of law, and certainly in the American system, I do not know how dealers who have lifetime investments could expect to receive less from the Congress of the United States.

Now, if further investigations in other lines would indicate that this was necessary in appliances or in oil and gas jobbing, if the study has been as complete as this has been in the Congress, then I would see nothing wrong in considering legislation of that kind, as well. But we are working in a field where either your automobile industry, the No. 1 consumer goods producer of the world, is going to remain a free, competitive, independently owned business on the marketing level. Ootherwise it is going inevitably to gravitate into the "super-market" stage to be followed—after the appeal of bargain and give-away and blitz advertising fails—by the factories having to put in their own dealership systems.

Mr. KEATING. I just picked the oil industry out of thin air. I could use life insurance perhaps as an illustration. My colleague from Ohio used household appliances.

Senator MONRONEY. The only reason we did not try to make this a general bill is we did not have the study, but we feel we have done the study in this field, and it is so important to preserve the economic health of the No. 1 industry. Overproduction in the automobile business and the failure of distribution system, affects our whole economy.

Mr. KEATING. Well, the opponents say this is going to cause an increase in the price of cars and throw a lot of people out of work. What is your answer to that?

Senator MONRONEY. Well, we had about a 3 million—30 percent—increase in the sales of automobiles last year by forced sales and blitz advertising, and did it lower the price to the consumer?

I don't know of any automobile factory that reduced the price because 3 million more cars were sold.

They argue that the price of cars goes up when production goes down and production goes down unless they can force cars on the dealers. Congressman Keating, I would say that if the Congress could fall for the statement that dealer's don't want to sell cars, and unless you put the blacksnake whip on their back and intimidate them they won't sell cars, that we are buying a phony of the first degree. The automobile dealers are in business to sell cars. They have got an overhead to cover. They make their money off of cars. That is their profit. And the idea that they cannot get sales unless you have got zone managers brain-washing the dealer, threatening to cancel him and give him an economic

death penalty is just so much eyewash; and that opinion is based not on questionnaires but on thousands of conversations personally and in small dealer meetings—representative of all factories—that I have had during the past 18 months in working on this problem.

The CHAIRMAN. I would like to know what your committee gathered by way of the charges of coercion and intimidation against dealers by the car manufacturers?

Senator MONRONEY. Well, our files are complete; our hearings are complete as to intimidation and coercion. The personal stories that I have picked up by the hundreds are clear.

The CHAIRMAN. Could you just give us an epitome for the record?

Senator MONRONEY. Well, I have seen letters signed by General Motors to a third generation dealer in Florida—one of the outstanding cases that I recall—a letter that I would not write to a Communist or to a dog, threatening him with immediate cancellation because he was second in price-class sales for 3 or 4 months.

This dealer had happened to have sold every car he could get from the factory. He was a Chevrolet dealer and sold every car he could get, but his competitor, a Ford dealer, was buying cars bootleg because he could not get enough Fords from the factory, and he was registering more cars because he was bringing in these bootleg cars. This Chevrolet dealer said, "Well, my father and my grandfather and I are in this business. I was the first one to attend from Florida the General Motors administrative school," and he said, "I am going to be the biggest bootlegger in Florida because I am not going to receive any more letters like this threat of cancellation."

We have had cases where they have been told to buy new locations. They had to build a new building and encumber themselves for two or three hundred thousands for a new show room. A 90-day franchise is all they have because it can be canceled on a minute's notice.

This man refused to buy that new building and move to the new quarters and he was canceled.

The man was put in his place and is still operating in the same old building and apparently not getting any more kick.

We had a case from Beaumont, Tex., where the man was one car short of exceeding the competition in the price-weight class, this grabbing the brass ring every month. You have got to be first every month. Somebody is going to be second. But in this current race the poor guy that is second, whether for his own failure or others is going to be threatened with cancellation.

This man was second for 2 or 3 months.

Mr. KEATING. Was that General Motors also?

Senator MONRONEY. That was a Buick dealer also in Beaumont, Tex., sworn testimony before our committee.

Mr. RODINO. They were not only threatened, Senator, but actually canceled.

Senator MONRONEY. This one was canceled. We had men who were canceled for various failures, some, we felt the evidence showed, for talking back to the factory man; complaints written in to the Ford Motor Co., receiving no attention, finally canceled, no chance to sell to the dealer of his choice, although there was a reputable Ford dealer in San Francisco that wanted to buy.

Mr. McCULLOCH. Does your study show how many cancellations of franchises were made by the Ford Co., by General Motors, and by Chrysler, for instance, in a 10-year period?

Senator MONRONEY. We have that, sir, and we can supply it to the committee. Of course, that does not tell half the story, because about two-thirds of these dealers we feel have voluntarily liquidated or surrendered franchises and the turnover the General Motors franchises and the turnover among Ford will be surprisingly higher than those who went to the last ditch.

I think it was significant when they were talking about this as though just the new and those who had been in on the war bulge were the only ones who were having trouble, to notice that the two oldest dealers in the city of Washington, one of the fastest growing and booming cities in the country, have liquidated in the last 6 months.

That is pretty important, and they were not "honeymoon dealers." They have been with it for a long time.

Mr. McCULLOCH. Do you have their statement as to the reasons?

Senator MONRONEY. It was printed in the paper. We have it. I know the last one that was liquidated just said that the conditions existing in the automobile distribution field were so difficult and impossible that the man just turned the key in the door.

Those are two of the oldest dealerships.

Mr. McCULLOCH. Those were two old dealers?

Senator MONRONEY. I mean the oldest in the city.

The CHAIRMAN. In Washington, D. C.?

Senator MONRONEY. In Washington, D. C.

Mr. KEATING. Well, now, on the other side we have heard a rather amazing story here about profits of automobile dealers, an extremely high percentage of their investment representing profits even after taxes.

There is practically no business I know of where they had such high profits.

Senator MONRONEY. Let me give you this significant figure. You get this from the factory and some way or other the Justice Department repeats whatever the factory says with regard to these efforts to protect little business.

Mr. KEATING. Oh, no, Senator; if you start political arguments here it is not going to carry any weight with me.

Senator MONRONEY. I am not trying to carry any weight. I am trying to say that the Justice Department, through the Antitrust Division, and the Federal Trade Commission, particularly, has reversed its policy of 1938 when it found—

Mr. KEATING. What is wrong with these figures? Are they wrong?

Senator MONRONEY. I would say they are establishing a false basis when they figure the investment. The important figure that cannot be challenged is that Ford Motor Co. made 17.3 percent profit per car and the dealers last year made 1.73 percent—one-tenth of the profit per car that the factory made.

Mr. KEATING. Do you claim that the figures contained in the Justice Department's statement are incorrect, that their average return is 13.81 percent after taxes for the year 1955?

Senator MONRONEY. That is according to the established accounting procedures which the automobile dealers have to keep according to factory dictation by which, the dealers tell me, they have to write off

vast sums of their investment to build up this so-called profit figure on investment, and we have the word of Mr. Henry Ford in his statement before dealers where he said he had learned of efforts of factory men to force a showing through accounting procedures that the dealers were making large amounts of money and invited such complaints from the dealers themselves to be brought to him.

Mr. SCOTT. You mean to say that the dealers are forced to make a profit or forced to show it?

Senator MONRONEY. To show a profit is what this was about, and when you have to keep your books exactly as the zone manager says and on the accounting systems which you are told to buy, dealers—some of the largest in the country, and some of them that are considered pretty strong dealers by the Ford Co.—have told me that they are forced to write off vast sums of their actual investment under factory bookkeeping systems.

Mr. McCULLOCH. Let me ask you this, Senator. Is that sort of bookkeeping in accordance with the practices and requirements of the Internal Revenue Service?

Senator MONRONEY. This does not apply to the Internal Revenue practices. They have a different system of bookkeeping. The bookkeeping that the companies require is the type of bookkeeping which they, from Detroit, order them to keep and which the factory and zone managers have to get.

Mr. McCULLOCH. Let me ask you this. Do you wish to leave the impression with us that these figures which Congressman Keating has pointed to are not figures which would be borne out by the income-tax returns of the dealers in question but are some second set of books that they keep in accordance with directions from the companies?

That is very important to me now.

Senator MONRONEY. That is right; but I do not think you can figure investment from your Internal Revenue books, and certainly we cannot get the 1954 figures, but we can determine accurately without a question of a doubt how much profit the manufacturers made per car, and we can determine without a doubt—

Mr. McCULLOCH. I would like to have your expression on this figure and of course would be happy to know how much the manufacturers are making, but I would like to know whether there are two sets of books used to arrive at net profits upon which taxes are paid and upon which the conclusions requested by the manufacturer are reached.

Senator MONRONEY. I don't know, but as near as I can recollect your Internal Revenue, you don't figure capital investment on that.

Mr. McCULLOCH. Well, if you write off something in accordance with proper depreciation schedules, that is certainly reflected—

Senator MONRONEY. I don't think you can get a base from that, because many of them rent, others perhaps lease the property from members of their family—I don't think you can establish the Internal Revenue figure on that.

Mr. McCULLOCH. It wouldn't make any difference, I don't believe, whether they rented it from a member of the family or Joe Doakes, because somebody must account for the rent that is charged up in the account, must they not?

Senator MONRONEY. But your figures from Internal Revenue will not reveal your capital net worth, I don't believe. I don't believe you will have any basis for showing the investment.

Mr. McCULLOCH. But I was getting to this required writeoff that you talk about. It is depreciation, or what is it?

The CHAIRMAN. Will you put in the record, Senator—it will be very helpful to us—the views of your committee with reference to the profits made by the dealers? I think it would be very important.

Senator MONRONEY. I would like to read from page 2013 of the record, Mr. CRUSOE on the stand, of Ford Motors.

The CHAIRMAN. Who is Mr. CRUSOE?

Senator MONRONEY. He is director and vice president of Ford Motor Co., in charge of the car and truck divisions. I asked this:

And your figures show that before taxes the net profit on sales of the dealer were—

Mr. CRUSOE. 1.73 in 1954—these are after taxes.

Then the testimony later showed 17.3 for the factory. And that is on the percentage of profits as to sales. I think that is the most reliable figure. It was given us by Henry Ford II, in testimony.

The CHAIRMAN. That is the profit of the manufacturer?

Senator MONRONEY. Manufacturer, per car.

The CHAIRMAN. I would appreciate it if you could supply to the committee the figures as to the profit of the dealers.

Senator MONRONEY. That is the profit, as testified by Mr. CRUSOE, 1.73 in 1954 on sales. And two questions later—

Mr. KEATING. On sales?

Senator MONRONEY. Yes.

Mr. KEATING. On gross sales?

Senator MONRONEY. On gross sales.

Later, I said:

“Would you please give that for the record”—as to the factory profit?

Mr. Ford says:

I can give it to you, Senator, for 1955, our percentage on sales before taxes was 17.3. I don't have it after taxes.

Mr. SCOTT. 17.3?

Senator MONRONEY. Yes; exactly 10 times per car the percentage of profit of the factory as compared to the dealer.

Mr. SCOTT. How do you reconcile the testimony of Mr. Gossett that the average profit of the Ford dealer, as I remember it, was about 16 percent?

Senator MONRONEY. They figure it on a factory-based percentage of investment, return on investment. We are figuring it on the return per car, because we feel that the factory base for the investment, the writeoff required by the factory, in the keeping of books, shows a completely unrealistic value of the dealer's investment.

Mr. SCOTT. But those writeoffs are very helpful to the dealers for tax purposes?

Senator MONRONEY. It doesn't do him any good for tax purposes, that is another set of books.

Mr. SCOTT. Well, since 1946, Senator, does your study show how many Ford dealer failures there have been? How many Ford dealers have failed through bankruptcy or otherwise?

Senator MONRONEY. We have only the all-dealer figure. It hasn't been broken down.

Mr. SCOTT. What percentage is the all-dealer figure to the total number of dealers in the country?

Senator MONRONEY. Since 1951 the number has increased by about 300 percent—the number of automobile dealer failures.

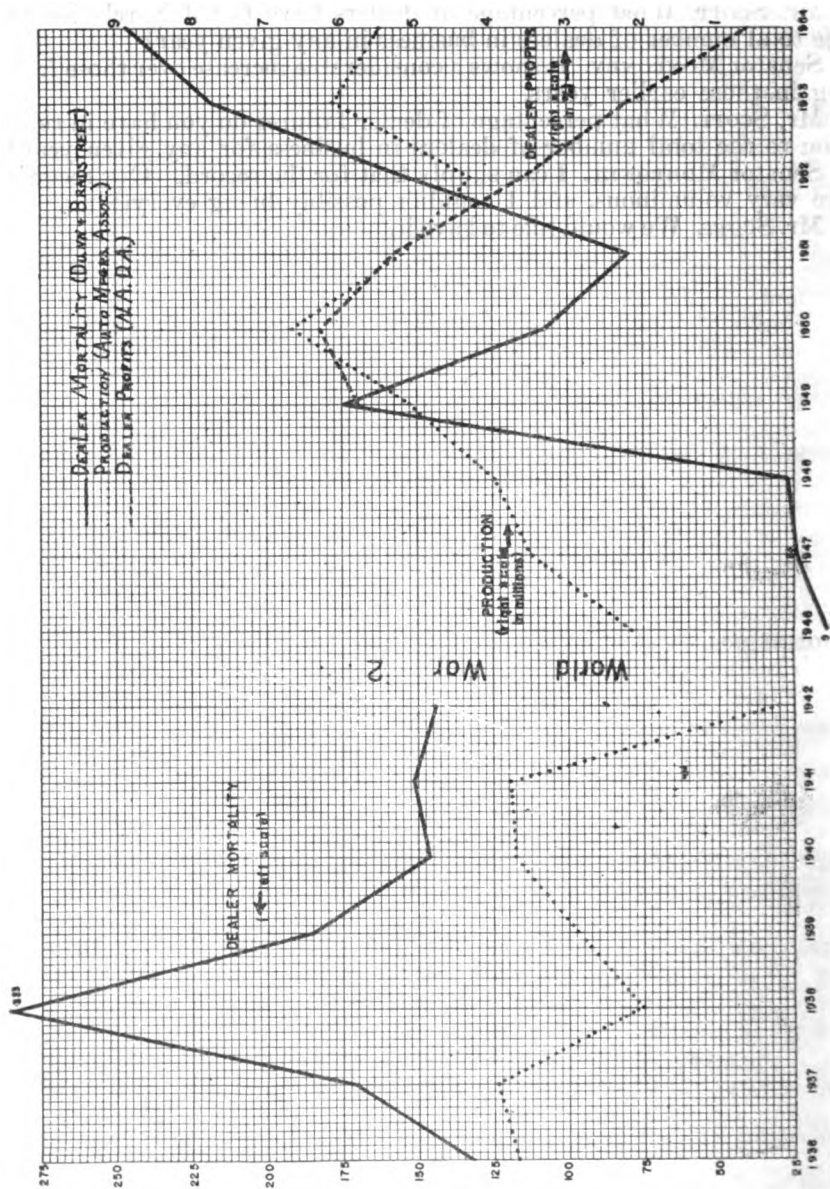
Mr. SCOTT. What percentage of dealers have failed in relation to the total number of dealers in business in any given year?

Senator MONRONEY. It shows a considerable increase over those failing in those earlier years.

Mr. SCOTT. What percentage of dealer failures do you have in relation to the total number of dealers in business for any given year?

Senator MONRONEY. I can supply that for the record. Our records are very voluminous, and I couldn't possibly bring everything.

Mr. SCOTT. We would like to have it.



One other question. Would you apply this bill to the farm equipment and gasoline industries, as well?

Senator MONRONEY. Any time that any congressional study is made showing the same things that have occurred as the automobile industry and that it is as important in our national economy, I certainly would.

Mr. SCOTT. Do you find any similar situation prevailing in any other industry in the country, sir?

Senator MONRONEY. I don't know of any similar conditions that exist. I don't know how anybody could—unless you had 95 percent concentration of the market in the hands of the Big Three—how you could get dealers to take these franchises. If you had 15 first-class automobile manufacturers looking for good dealer outlets, your dealers would be free agents, and would be then able to bargain to get a mutual contract.

Under the present system you can not get one, and you have got a one-sided contract that requires the dealer to make tremendously heavy investments, with a 90-day lease on life.

Mr. SCOTT. There are more than 15 kinds of automobiles made in the country now, aren't there?

Senator MONRONEY. I don't think so.

The CHAIRMAN. There are only three manufacturers.

Senator MONRONEY. Fifteen automobiles are made, but the companies that make them are narrowed down to five.

Mr. McCULLOCH. But Senator, we had the same kind of contract which we don't like, back in the twenties and before, and in the thirties when there were more than three major automobile manufacturing companies, didn't we?

The CHAIRMAN. Congress wasn't so enlightened then.

Senator MONRONEY. You had bad contracts in 1938, and there were more factories then.

The CHAIRMAN. Maybe I should say, the Senate and the House weren't so enlightened in those days as they are now, in sensing the need for some sort of action.

Senator MONRONEY. It was a matter for investigation. And the Federal Trade Commission was ordered by the Congress in 1938 to investigate these practices, and came up almost with the identical set of conclusions. Then the war came on, and they didn't have any cars to sell between 1942 and 1946.

The CHAIRMAN. Senator, our members are eager beavers when it comes to questioning, but we don't want to interfere unduly with your main statement.

Senator MONRONEY. It makes the statement interesting, may I say, and I would be perfectly willing to answer questions and put the statement in the record. I know that is what would interest you. I would much prefer to do that.

No one could object to giving a dealer his day in court on a contract that is one-sided—and we know it is—no one would object to giving him his day in court, and, after all, he must go before a Federal judge and prove bad faith to collect any compensable damages he receives. How can you deny him that right?

Mr. SCOTT. Is that any different from farm-equipment franchises and gasoline-station franchises? And if so, what is the difference?

Senator MONRONEY. As I said earlier, and I think you were out, Congressman—

Mr. SCOTT. Yes. I know. I am sorry.

Senator MONRONEY. This I know. This we have worked on for 18 months. This we talked about to hundreds of dealers. On this we have received answers to questionnaires from 19,500 dealers. I would not be one, and I do not think you would, to rush into broad-scale legislation affecting many segments of our economy without adequate study. And this being the No. 1 industry, not only of the United States but of the world, having a great impact on our national prosperity, and being in the condition our committee has found it to be in, and Senator O'Mahoney's committee in a separate study has found it to be in, then I think it is time for us to act—not to postpone for another 10 years the dealer's day in court.

The CHAIRMAN. I want to get this clear, Senator, if I may, on the question of intimidation and coercion. Did your study reveal that that intimidation and coercion was prevalent as far as all the Big Three are concerned?

Senator MONRONEY. More prevalent, I would say, among the Big Two, which, of course, occupy 80 percent of the production. The Chrysler production is only about 15 percent, and they apparently have not been quite as prone to use the intimidation and forcing of sales and threats, if dealers did not go into blitz advertising and unethical practices, as we found in the others.

The CHAIRMAN. When you say "Big Two," you mean Ford and General Motors?

Senator MONRONEY. Ford and General Motors. The bulk of the complaints came from Ford and General Motors dealers; some from Chrysler, but a great deal fewer in proportion. They were not in the position that the Big Two were. Whether Chrysler would have used such tactics if they could, I cannot say.

But the matter of bootlegging has been brought up. This bill hasn't a thing to do with bootlegging. This bill merely gives the dealer a day in court.

We hope that the bill which we have before my subcommittee will deal with bootlegging, with intimidation, with threats and coercion.

The CHAIRMAN. I am very glad you made that distinction, because your bill concerns itself mainly with that, and the bill before us does not.

Senator MONRONEY. That is right. We attempted, Chairman Celler, to cover in our general bill this very subject matter. In conferences with Senator O'Mahoney, who had also made a thorough study, we took out the day-in-court provision from our bill, and I joined Senator O'Mahoney in his bill because I felt the jurisdiction properly was in the Judiciary Committee. The merchandising practices are in the Interstate and Foreign Commerce Committee, and respecting this jurisdictional line, and instead of having an omnibus bill, we split it.

But this one, I can say from my conversations with the dealers, is the minimum that they feel they have a right to expect as American citizens, and certainly the problem is important enough to allow them their day in court.

Mr. SCOTT. May I ask a question?

The CHAIRMAN. Certainly.

Mr. SCOTT. Senator, what objection do you have to applying the principle of mutuality here in order to have good faith apply to the right of the manufacturer as well as the dealer? Is not the manufacturer also entitled to a day in court?

Senator MONRONEY. It provides in the latter part of the bill that in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

Up here:

The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents to act in a fair, equitable, and nonarbitrary manner so as to guarantee such other party freedom from coercion, intimidation, or threats of coercion or intimidation.

The CHAIRMAN. Senator, you would not want the dealer to have a right to sue Ford, General Motors, or Chrysler for intimidation; would you?

Senator MONRONEY. This bill would give him certain rights, but to hear the manufacturers' arguments, you might think that the dealers were just about ready to coerce them.

The CHAIRMAN. I meant the other way around. You would not want a provision in the bill specifically saying that Ford and Chrysler and General Motors shall have the right to sue the dealer because of intimidation?

Senator MONRONEY. They have that right.

Mr. SCOTT. You are referring to some amendment that was put in on the floor of the Senate after your committee considered it; are you not, Senator?

The CHAIRMAN. We do not give that right. We do not give the right to the manufacturer to sue for intimidation.

Senator MONRONEY. Each party to any franchise.

The CHAIRMAN. The manufacturer can assert certain defenses when he is sued for lack of good faith.

Senator MONRONEY. That is right. And the term "good faith" shall apply to the duty of each party to any franchise.

Mr. McCULLOCH. Wasn't that provision written in, as has been indicated, on the Senate floor?

Senator MONRONEY. It was written in on the floor; that is right. And I think it improved the bill.

Mr. McCULLOCH. I do, too.

Senator MONRONEY. And the question of good faith allows the manufacturer to raise that—whether the dealer exercised good faith in any suit.

Mr. MALETZ. It is correct, Senator Monroney, is it not, that under the Senate bill as approved, the dealer owes the duty of good faith to the manufacturer and the manufacturer owes the duty of good faith to the dealer?

Senator MONRONEY. Exactly.

Mr. MALETZ. But only the manufacturer can bring suit; is that not correct?

The CHAIRMAN. Only the dealer.

Mr. MALETZ. I mean, only the dealer can bring suit.

Senator MONRONEY. I think the manufacturer has always been able to bring suit.

Mr. MALETZ. The committee's understanding of the bill itself is that only the dealer can bring suit, but the manufacturer can assert in defense of any suit the failure of the dealer to act in good faith.

Senator MONRONEY. I still think—I am not a lawyer—but I still think the manufacturer can bring suit and has always been able to bring suit for breach of these franchises.

Mr. MALETZ. I do not believe there is any such provision in the bill, as the committee understands it, Senator.

The CHAIRMAN. Read the Senate bill, page 3, section 2, line 5.

Senator MONRONEY (reading):

An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy.

The CHAIRMAN. In no place does it say that the automobile manufacturer may bring suit.

Senator MONRONEY. I think the manufacturer has always had the right to bring suit.

Mr. SCOTT. Well, it does not have it in this bill, though, Senator, does it?

The CHAIRMAN. You would not want it in the bill?

Senator MONRONEY. I think the manufacturer has always had the right, because nothing in the franchise takes away the manufacturer's right to bring suit.

The CHAIRMAN. He can sue for other causes.

Mr. SCOTT. Maybe we just overlooked the manufacturer.

Senator MONRONEY. No. I think he has always had the right.

The CHAIRMAN. I do not think we have overlooked it. I do not see why the manufacturer needs to sue the dealer for so-called intimidation.

Senator MONRONEY. It would be a little bit strange.

The CHAIRMAN. Did your investigation indicate any coercion or intimidation by the dealers?

Senator MONRONEY. We had no record of that.

The CHAIRMAN. It was the other way around; is that not correct?

Senator MONRONEY. That is right.

Mr. SCOTT. I am thinking of the right to have redress, to redress a wrong by either party here. It does not make any difference to me whether it is the dealer or the manufacturer. If you are going to draw legislation, why not draw it with some mutuality? That is what I am inquiring about. I just do not see the mutuality. But it may be there.

Senator MONRONEY. I feel it is.

The CHAIRMAN. Is it your understanding, Senator, that we legislate to meet certain evils and certain improper practices? If there is no evidence to indicate that the dealers indulge in these practices which are indulged in by the manufacturers, what is the sense of giving the manufacturer the right to sue the dealer for so-called intimidation and other evil practices when they do not exist, when, on the other hand, there is clear indication that such practices by the manufacturer do exist?

That is the reason why the bill was drawn that way, to give the dealer the right to sue, and not the manufacturer.

Senator MONRONEY. I still think the manufacturer has had the right to sue.

Mr. SCOTT. Is that not a very good reason for some further study here, because the Senator has the view that this bill means one thing and the chairman of this committee has a view that it means the other. If we do not know precisely what we are legislating in the two bodies, I think we ought to go back and take another look at it.

Senator MONRONEY. I thought that was the purpose of these hearings, and you gentlemen on this committee are all lawyers. I happen not to be a lawyer.

The CHAIRMAN. I think with all due respect, Senator, we are lawyers, and I think, therefore, familiar with the legal import of words. I think with all due respect to the gentleman from Oklahoma, I am quite sure you will find that this gives the right of suit primarily to the dealer and not to the manufacturer.

Senator MONRONEY. I feel the manufacturer has always had that right to sue. Words in the franchise like "to the satisfaction of the seller (manufacturer)" preclude dealers from their day in court. These do not apply to the manufacturer in the franchise.

Mr. McCULLOCH. We are also talking about the right of defense that a manufacturer may have when the dealer brings the suit.

The CHAIRMAN. That is right.

Senator MONRONEY. That is clearly written into the bill.

Mr. McCULLOCH. I think perhaps counsel for this committee has written a provision which is of material help in clearing up that situation.

As I understand it, did not counsel write the provision in this bill that I have which says, in effect, at the end of line 15, page 3, and I quote:

"*Provided*, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith."?

Mr. MALETZ. Mr. McCulloch, that was a Senate amendment to S. 3879.

Mr. McCULLOCH. That was the amendment that was written in on the floor of the Senate?

Mr. MALETZ. Yes; that is right.

Mr. McCULLOCH. I see.

Senator MONRONEY. The bill as it came over to you made two major changes, one to make the good faith provisions apply "shall be the duty of each party to any franchise," and in the second one, "the dealer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith." Also, of course, damages were made "compensatory."

The CHAIRMAN. Do you want to put the balance of your statement in the record?

Senator MONRONEY. Well, if I might; I would like to, sir. I have a rollcall going on.

Have you got one too?

The CHAIRMAN. It looks like we are going to have one.

Senator MONRONEY. I would like to, if there is no objection, put the balance of my statement in the record.

I would be glad to reappear if there is any further questioning on this. I am sorry that we have this rollcall on an aviation matter, a bill that I have coauthored, and I should be there at this time.

The CHAIRMAN. We are very glad to receive the balance of your statement in the record, Senator.

You make any corrections you wish and your staff may want to insert that additional data which we have requested.

Senator MONRONEY. Yes. Thank you for your courtesy of allowing me to appear and for your very careful consideration of this bill which passed the Senate by a vote of 75 to 1.

The motion to recommit was finally tabled by the man who made the motion to recommit, Senator Potter, and on rollcall vote 75 voted for it and 1 voted against it.

The reason I think it was overwhelming was the two amendments that were put in eliminated the primary objections that had been raised by opponents of the bill.

Mr. SCOTT. As they say on Meet the Press, the questions asked by the participants do not necessarily express their views but are their way of bringing out the facts?

Senator MONRONEY. May I say in conclusion in my experience in talking to these dealers off the record and in other small meetings is that the very minimum that they feel they have the right to expect is an opportunity to have their "day in court" where bad faith has been shown in the handling of the contracts which admittedly are one-sidedly in favor of the factory.

(The remainder of Senator Monroney's prepared statement is as follows:)

We closed our hearings June 21, just 2 weeks ago last Thursday. The transcript consists of 2,765 pages of testimony. We heard more than 100 witnesses and received hundreds of wires and letters and statements.

For a few moments, I would like to tell you what we heard in sworn testimony before our subcommittee about the coercion of automobile dealers by factory representatives. We heard sworn testimony from dealers that they were canceled for failure to get their percentage of price class when they couldn't get delivery of cars to sell. We heard instances of dealers with 20 years as loyal, faithful servants of the factory being canceled by brief, curt one-paragraph letters with no explanation except that their performance was considered unsatisfactory. One dealer attributed the death of his brother to the pressure of seeing his life savings swept down the drain by factory cancellation because of the dealer's refusal to change his location. He wanted to stay in the center of town rather than build a "monument for the factory" on the outskirts. The subcommittee heard the testimony of a dealer from Beaumont, Tex., who was canceled after he failed to get the percentage of price class which his factory thought he should have. By how much did he fail? By one car. This particular dealer had written his factory many, many times regarding "bootleg" cars being sold in his area. He sent them the serial numbers and all necessary information so that the bootlegger could be identified by the factory. He received no reply. The subcommittee heard sworn testimony that "pet" dealers in the low-freight areas of Chicago and Detroit boasted of the cars they were "bootlegging" to distant areas when dealers in the same areas couldn't get delivery. We heard uncontroverted testimony that dealers were requested to make gifts of diamond rings, and palomino ponies and silver saddles to zone and district factory personnel—the men on whose whims the economic life of the dealers depended. We heard admitted by the President of Ford Motor Co., Henry Ford II, that he had allowed his personal secretary to set up a nationwide web of political contributions to be solicited from his dealers. We heard testimony from dealers that they were required to buy tools, accounting forms, direct-mail advertising, and other things they did not consider to be necessary or beneficial to their business. We heard

that dealers were encouraged by the factory to engage in destructive marketing practices such as "price packing" and "blitz selling," and "bootlegging."

Perhaps as important as anything else, we heard dealer after dealer testify of the inability of a dealer to sell his assets on the open market when he wanted to get out of the business. We heard the case from Vermillion, S. Dak., where the dealer was required to sell his dealership for \$19,500 instead of the \$50,000 which he had been offered from a ready, willing and able buyer—another dealer of the same manufacturer. This was because the factory refused to enfranchise this buyer. We heard of many more things that would astound this subcommittee as it astounded us. It's all in the subcommittee record.*

And now, let me mention just briefly another interesting thing. The Anti-monopoly Subcommittee of the Senate Judiciary Committee, ably chairmaned by Senator O'Mahoney, started in from the other direction. They started from the top, dealing with monopolistic practices and undue economic concentration, and came into the same problem that we had been studying from the marketing level. They heard much of the same sort of testimony from dealers of General Motors Corp. And they came up with the same conclusions that we did.

Those conclusions are that when you have a situation in which three manufacturers control the sales of 95 percent of the automobiles in America—probably the most necessary household item in our economy—and where these three manufacturers have nearly 30,000 small business outlets completely dependent upon them, there arises a disparity of bargaining power. The further conclusion that both committees have come to is that much of this disparity of bargaining power is centered in the contract itself.

This situation is somewhat analagous to the status of labor many years ago, when Congress had to outlaw the "yellow dog" contract.

Now, so that we can get the proper perspective on this whole problem, let me quote a few words of testimony the source of which I will disclose after I read them, and I ask the members of this committee to guess the circumstances under which they were spoken:

"It may be presumptuous for us to discuss or suggest that a problem of this character might exist, because we find that the members of this committee and the Members of Congress pretty generally realize that there is a problem which confronts the automobile industry, and particularly the retail division of that industry.

"A great deal of the difficulty, a great deal of the controversy, a great deal of the situation that is debatable is the result of the type of arrangement that exists between the manufacturer of the automobiles and the dealers.

"There is in existence a sales arrangement between the two divisions, if we may term them such, commonly known as a contract, but which is more generally considered to be a franchise or a right to sell. Probably all of the difficulties in the retail branch of the automobile industry stem from this arrangement, at least it is thought so by a great number of people. The system under which the automobile dealers now operate has grown, without any marked changes, until it has become to be regarded as a part of the system of the automobile industry, and it differs widely from present day methods of doing business in other lines. The industry has changed, conditions through the United States and the world have changed, but this franchise arrangement has changed very little.

"At one time in this industry the problem was that of manufacturing—to produce an adequate number of automobiles to satisfy the demands of the consuming public. With the increase in the improvement in the manufacturing facilities—and this has been true especially within the last decade—that problem of the manufacturer no longer exists. They have been able to maintain a sufficient output to satisfy the demand of the public, insofar as modern facilities for making cars is concerned. So that is an essential change and an essential difference confronting the industry that does not compare with the situation that formerly existed.

"Now, there is also another factor that has developed in the last few years and that is the used-car situation. At one time when there were no considerable number of automobiles owned by the public, people came in to a dealer and bought cars for cash, or paid for them on time, as the case may be, but offered no merchandise in trade. Today that condition has changed until in the present year practically every buyer of a new car brings in a used car as part payment

*See Appendix B to statement.

on the deal, which the dealer must dispose of, and many times before the transaction is finally consummated there will be a second used car handled. Now, that has brought about an entirely different situation or change in the merchandising practices. During this time there has been little or no change in the franchise arrangements under which the dealer must work.

"Now, this system, in which this franchise arrangement is in effect, has a tendency to make the automobile dealer subservient to the wishes of the manufacturer if he wishes to continue to sell the product of that manufacturer.

"It is a very significant fact that most of these franchises are cancelable, with or without cause and can be terminated immediately upon notice.

"This system under which a manufacturer establishes an automobile dealer who is induced to invest a substantial amount of money to work under a franchise which is cancelable at the will of the manufacturer, permits of coercive practices in the sale of automobiles and in the sale of parts, and in the sale of the equipment to service the automobiles.

"Now, this investment, once it is made, depends for its value upon the continuing of the franchise, and so long as it is possible for a field representative of the manufacturer to say to the dealer 'if you wish to continue or renew the franchise or permit to do business, you must buy these automobiles, or you must buy these parts, or you must come in on this advertising program or we will get a new dealer in this community,' and dealers will be forced to employ trade practices which are not in the public interest in many cases.

"Now this coercion—and it is coercion—may be only implied. It may be merely that there has been some dealer in another community who has had his contract or franchise canceled 'for failure to cooperate' and that is used as a warning.

"I think, gentlemen, one of the most significant things about this whole situation that comes to my attention from time to time is this: Frequently, very frequently, when we have a letter from some dealer who is making a complaint regarding this system invariably the dealer will conclude the letter by some such statement as this: 'Please do not mention my name.' He fears that if the manufacturer learns of the complaint that their relations might be disturbed.

"Now, because of the type of contract, or franchise, or document, whatever it may be called, existing in the business which permits a man to become a dealer or to engage in the business of selling cars for the manufacturer, there has developed, we believe, certain types of coercive practice which are against the public interest, and certainly practices which work to the disadvantage of the automobile dealers. It has resulted in the development and the employment of certain unfair trade practices.

"It is quite common to have automobile dealers say, 'well, we object to the employment of this practice, but we have our capital invested and we must make a profit, if possible, and we must engage in these practices in order to make a profit.'

"We find such practices as these in the industry among the automobile dealers as selling cars below cost, when the used-car losses are considered. There are thousands of dealers who year after year would have losses if it were not for the profit on the operation of the service department, or on the sale of parts or on accessories and other related items.

"We find that dealers discriminate between buyers. Some get better 'deals' than others because of the sales pressure of the factories.

"There is a great deal of misrepresentation practiced in the industry because of the system which is employed and which we have described.

"We find that dealers sometimes charge excessive finance fees, or financing charges, because under the franchise agreement with the manufacturer the only profit many can make in the sale of the automobile is in the financing fee, incident to the sale. In this connection it is alleged by some dealers that they are often required to use only the finance company or institution that is designated by the manufacturer.

"All of these unfair trade practices we believe result from the contract arrangement existing in this industry."

Those words are as crisp as fresh lettuce. What could speak more eloquently, Mr. Chairman and members of this committee, than the fact that these words were spoken before a subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives on December 16, 1933, by Mr. A. N. Benson, general manager, NADA. From these hearings grew the painstaking, thorough 1077 page 1938 Federal Trade Commission report to which there has been so much reference because it reflects the same conditions we find today.

Does this not prove that this same condition, that is so bitterly complained of 17½ years later, is chronic? Does this not show that Congress has been careful, patient, perhaps even delinquent, in its consideration of the problem? Does this not show that the problem will recur if left alone? Does this not show that it is imperative to make this bill the law of our land, if we wish to free "free" enterprise in the small business segment of our number one industry?

What fundamental fact comes from the investigation held for the past 3 years and from the extensive investigations held in 1937 and 1938?

This central fact is and remains: there is a disparity of bargaining power between the manufacturing and retailing segments of the automobile industry, and that this disparity of bargaining power is to a large degree compounded and manifested in a one-sided contractual agreement by which the retailers are made economic vassals of the manufacturers, even though economically—in investment and in employment—the dealers almost equal the manufacturers.

This bill attempts to alleviate this problem to a certain extent. It will not and does not purport to relieve the situation completely. It merely requires that with regard to these one-sided contracts, the principle of fairness be written in; that "good faith" be maintained by these industrial giants in their relations with their dealers.

I am amazed and somewhat amused by the wailing and moaning and gnashing of teeth which we hear from the manufacturers regarding passage of this bill. They ask when "good hard selling" stops and "bad faith" begins. I will admit that, for the past few years, the factory zone and district men have not been able to make this distinction. Their callousness toward the interests of dealers has rendered them unable, perhaps, to determine the meaning of the words "good faith." However, I submit to this committee that the courts of this land will have no difficulty with the term. It is an historic term, which I understand has grown up and been in use since the early days of the common law with regard to parties who bear a necessarily close relationship of trust and confidence toward one another.

And speaking of this disparity in bargaining power, Mr. Chairman, I want to point out that the discrepancy in bargaining power is present not only in the marketplace but in the courts as well. This bill provides for damages to a dealer who is wronged by his manufacturers. But we must never forget that the dealer must prove this wrong in court; that he must go into court against the battery of corporation lawyers which these giant industrial firms employ and be subjected to the delaying tactics and the many, many difficulties and heavy expenses that beset the private litigant in these cases. I need only call the attention of the subcommittee to the fact that the United States Government itself spent from 1937 until 1952 in one case against General Motors Corp. in attempting to divest it of General Motors Acceptance Corp. and then failed to win more than a "dog fall." A private case arose out of this action. Although the facts were admitted and the judgment went against the company, the company has been able to keep it in court and it is still in court today, after 12 years. I further understand that the litigants, and even their attorneys, have been financially ruined merely by carrying on this case for such a long period of time. That case, mind you, is a triple damage suit under the Sherman Act.

The reason I strongly advocate the passage of this bill, regardless of the amount of damages you decide upon, is the fact that merely having such a law on the books will have a great psychological effect upon the retail segment of the industry. Perhaps it can be strengthened later on if the necessity becomes apparent.

At any rate, Mr. Chairman, as I stated before, I am somewhat amused at the hobgoblins which are being raised by the automobile manufacturers with regard to this bill. I understand that much confusing propaganda has been put out to turn dealers against it. They have told dealers that it would keep a manufacturer from effectively stopping bootlegging—that if the manufacturer tried to do so, he could be sued by the bootlegging dealer. In all our extensive hearings, no one has ever questioned the right of the manufacturer to protect the goodwill of his product by preventing destructive bootlegging practices. The manufacturer has that right today; he had it yesterday; he will have it after this bill is passed. It does not address itself to the bootlegging problem. A manufacturer who seeks to protect the goodwill of his product by preventing dealers from bootlegging even by canceling such dealers in justifiable cases, could not be deemed within the intentions of this bill, to exercise bad faith in its relations with that dealer. The dealer, himself, would be the guilty party in that case.

Incidentally, speaking of bootlegging, no one is more concerned with this malicious practice than I am. I am the author, along with Senator O'Mahoney,

Senator Payne, and others of another bill, S. 3946, which does deal with the problem of bootlegging. I sincerely hope that S. 3946 will be given every consideration when it comes before the House, because I think it is a good bill that sets up basic ground rules of fair play in the market place. It makes certain actions by dealers and manufacturers "unfair trade practices" under the scrutiny of the Federal Trade Commission.

I understand that an attempt has been made, by those who seek to defeat H. R. 11360, to confuse these two bills. Let there be no such confusion in the minds of the Members of Congress. H. R. 11360 has no reference to any board or commission. It merely gives to the automobile dealer the same right other businessmen and, for that matter, even criminals, enjoy:

The right to have his "day in court."

I am sure that the technicalities of the bill have been discussed by more able constitutional authorities than myself. I am no lawyer, but I compliment myself in thinking that with the experience I have gained during 18 years in Congress and with the experience I have gained in exhaustive study of automobile retailing over the past year and a half, I know the purposes, intents, and values of this bill. I know that this bill divides those who want to perpetuate and strengthen the hold of big business on the market place from those who wish to protect the thing that has done the most to make the American economy great—the small-business free-enterprise system.

Those who predict dire consequences and economic doom with its passage are the same people—or the same sort of people—who raised the same hue and cry when we passed the Securities and Exchange Act, the Federal Deposit Insurance Act, and all the other legislation which, in the end, is of great benefit to the very industry that cries the loudest.

Therefore, Mr. Chairman and members of this distinguished committee, I hope that you will report this bill favorably to the House floor without delay—for delay is its worst enemy. In doing so, you will have the satisfaction of knowing that you have given help to small-business men all over America, and especially to the 42,000 automobile dealers, in their never-ending fight for economic freedom.

APPENDIX A TO THE STATEMENT BY SENATOR A. S. MIKE MONRONEY BEFORE
NO. 5 SUBCOMMITTEE OF THE JUDICIARY COMMITTEE OF THE HOUSE OF
REPRESENTATIVES

[Excerpts of testimony by automobile dealers regarding coercion and intimidation by manufacturers given before the Subcommittee on Automobile Marketing Practices, Committee on Interstate and Foreign Commerce, United States Senate]

I

Volume 3: Proceedings before the Subcommittee on Automobile Marketing Practices, Committee on Interstate and Foreign Commerce Tuesday, February 21, 1956, United States Senate.

Testimony of Carl E. Fribley, president of NADA, Pontiac dealer (P. 380):

"Mr. FRIBLEY. You are touching on a very important fact there, Senator Frear. Even with your 19,113 replies, as I recall it, better than 4,000 of them refused to sign. Why did they refuse? You certainly made your position and the position of this subcommittee very clear, that no names would be revealed, but that is an ingrained fear that has been built over a period of years, and I submit to you, sir, that if you or the Congress of the United States, or someone can take fear out of the heart of automobile dealers, you will be doing a magnificent job for this country.

"Senator MONRONEY. Well, isn't it a fact that the way practically every major factory's franchise is written, that you have an arbitrary death sentence economically hanging over any franchised dealer?

"Mr. FRIBLEY. Correct.

"Senator MONRONEY. Once his dealership is withdrawn by a major factory, would you not, on your experience, state that he would have a most difficult job in finding another leading franchised car in which to carry on his business and utilize his plant, which perhaps runs into the neighborhood of a quarter to half million dollars?

"Mr. FRIBLEY. That is correct.

"Senator MONRONEY. So without appeal, without a trial, without mediation or arbitration, the displeasure of the sales manager can mean the economic death warrant for a business that has perhaps survived 1 to 2 wars and 1 to 2 depressions, but he can go down the drain within 30 minutes under the present contractual relationship.

"Mr. FRIBLEY. Correct, and you cannot criticize dealers for lack of courage under those conditions.

"Senator MONBONEY. I certainly agree with you that one of the most significant things was that which was unsigned in there and we tried to make it clear, having sensed that the fear element was an important thing, and invited the signatures, but told them in case they felt they did not wish to sign, that we would still consider and tabulate those returns.

"Mr. FRIBLEY. Correct."

II

Volume 4: Proceedings before Subcommittee on Automobile Marketing Practices, United States Senate, Tuesday, February 21, 1956.

Testimony of James P. Mayo, former Pontiac dealer, Nashua, N. H., (pp. 407-408) :

Mr. MAYO. Anyway, this fellow (factory man) took the trend that the way to get me out of this business was to insist that I provide \$8,000 worth of facilities for customer labor sales each month. Now \$8,000 in itself is not much of a figure, but at that time that would have more than the combined facilities of any three dealers in Nashua, N. H., and Pontiac is not the largest franchise in New Hampshire.

"Senator MONBONEY. Either you are misstating that or I am misstating it. The \$8,000 wasn't the cost of the remodeling job, but \$8,000 worth of customer labor?

"Mr. MAYO. That is right. He wanted me to take enough money to remodel my facilities so I could do that.

"Senator MONBONEY. You stated it so it would indicate it would only cost you \$8,000 to remodel.

"Mr. MAYO. If it only cost me \$8,000, I would have done it. What he wanted me to do would cost me \$75,000. I refused and he threatened cancellation."

Page 409: "Just before they replaced this Mr. Norman, they had a zone meeting in which Mr. Batrick was going to make the principal speech and I was singled out before the meeting and told that if I opened my mouth, if I said anything in the meeting, that I couldn't attend, that I would have to agree not to do that or they wouldn't let me in.

"Well, I wanted to go so I agreed to keep my mouth shut."

Page 417:

"Mr. MAYO. Now I received in January of 1955, January 25, to be exact, my advertising statement which General Motors, in the Pontiac Division, at least, sends out once a year. You are familiar with the advertising. It is our money. They take it out of every car we buy. They hold it there. They pay us no interest. They give us an accounting of what they have done with it once a year. We have no control over it. We can't say—I will qualify that—if you put up enough of a fight, you can maybe get them to let loose of a little bit of it for some program which I will show later here."

III

Volume 5: Proceedings before the Subcommittee on Automobile Marketing Practices, Committee on Interstate and Foreign Commerce, Wednesday, February 22, 1956, United States Senate.

Testimony of James P. Mayo, Former Pontiac dealer, Nashua, N. H. (p. 427) :

"Senator MONBONEY. I believe you stated, about the last thing that the straw that broke the camel's back, the last thing that happened before you decided to get out of the automobile industry, after many, many years of successful operation, through good years and bad, was when you were literally told to use the pack by the authorities of Pontiac Motor division. Is that a fair summarization?

"Mr. MAYO. Right."

Pages 429-431:

"Mr. MAYO. An additional exhibit here, which I am going to put in the record—I went to a contracting meeting November 22, 1950, or rather I wrote this letter shortly after having been to the contracting meeting, and I objected very strenuously to the manner in which they force you to buy everything under the sun, whether it will fit into your showroom or not. I wrote Lantham Clark, who was the Pontiac Motor division zone manager at that time, and this letter is dated November 22, 1950, and I told Latham that I didn't like that procedure, that in the future I would like to take home a list of the material and see if I could use it, and if I could use it, then I would buy it. I didn't hear anything from him until October 1 of 1951, which is almost a year later, when he informed me that I could

not go to the contracting meeting which was coming up because I objected to the procedure which they were using at the meetings.

"In fact, I didn't even know they were holding contracting meetings except that some of the dealer friends called me up and asked me if I was going, and I said 'Going to what?' They said 'we are going to have a contracting meeting. Aren't you going?'

"I said, 'I suppose I am. I haven't heard anything.'

"Then I started inquiring around and I got this letter, in which they told me that the only reason I wasn't invited was because I objected to buying all of this stuff without knowing whether it would fit into our showroom or not. I was subsequently contracted at the zone office, not at the regular meeting of the regular dealers.

"Senator MONMONEY. They segregated you.

"Mr. MAYO. They segregated me, right. Also on May 12, 1954, I went to another dealer meeting and they were working on me through other dealers at this time. Frank Costello, who was the dealer in Portsmouth, N. H., came to me on the quiet and said, 'Jim, I have been told by the zone office that it will be much better for you if you would quit writing to the factory.' I have this letter. This memorandum was written by me on November 12, 1954—I'm sorry, that was May 12. While at the New Hampshire dealers annual meeting May 11, 1954, Frank Costello, Pontiac dealer from Portsmouth, N. H., spoke to me very confidentially. He said while he was at the Pontiac dealer meeting in Manchester, May 4, Clark, then zone manager at Boston, asked him to tell me that it would be better for me if I did not write to the factory. Costello and I talked about this matter for over an hour. I left very indignant about it, even more than Clark would threaten me through another dealer. Costello was concerned with distribution to Scottie's—that is a Pontiac dealer, a stimulator dealer just outside Portsmouth.

"This is a 25-car town and the dealer I understand last year sold more Pontiacs than any other Pontiac dealer in New Hampshire."

Pages 432-433:

"Now on April 5, 1954, I wrote to Harlow H. Curtice, General Motors Building, Detroit, Mich., because I was concerned about the kind of advertising appearing in the Boston Globe. I sent him a copy of the ad in which I pointed out that these cars were being offered for sale by dealers that weren't even franchised dealers. And that I thought that we would have to find some way to control the used car business within the new car dealer body or the pricing control would slip entirely from the manufacturers and the dealers to the detriment of the public in the long run. I got an answer back from Mr. Chapman, assistant general sales manager, in Pontiac, in which he said it was difficult to discuss things like this over the phone but that he was sending Mr. Clark and Mr. Kassan, who was the regional manager for a personal conference with me. They arrived for this conference and would not talk to me in my office. They made me sit out in a car. It happened to be a warm day. And they closed all of the doors and all of the windows and they proceeded to take me around.

"They frankly told me that they didn't like the manner in which I had written letters to the factory and they wanted me to cut it out. This went on for an hour.

"Finally, I asked if I could have a copy of the report they were going to send back to the factory. They said no, that was confidential, they would not give it to me. That was the first of what I called the goon sessions. Now I have here two pieces of material which show that I am not the only guy that gets this treatment. One is a friend of mine, a copy of a letter I wrote, in which I cited the circumstances under which they had canceled the franchise from the Buick dealer in Nashua, N. H. They told him if he would only outsell Jim Mayo they would continue his contract in 1955. This was in 1954 he got this letter. Then in 1955 Jim Mayo had a health problem. I was sick for awhile and it wasn't difficult for anybody to outsell me and he outsold me very handsomely and they canceled him anyway."

Page 437:

"I was invited to attend a dealer conference at Pontiac, but when they invited me they told me that I would have to prepare my remarks before I went out. that I would have to send the remarks to Pontiac, that they would edit them and that I would be limited in what I could say to what I had in the remarks.

"I told them under those conditions I would never attend a dealer conference, that I did not consider it a conference anyway."

Page 441-443:

"I made this trip to the factory in an effort to try to get my basic allotment increased.

"He promised to increase the basic allotment from the 119 which I was getting to 175, which I wanted.

"This went on for 5 months. Then we were in the middle of the summer, and you know what happened in the middle of 1953, anybody had automobiles who wanted them. We went into cleanup and I could get cars then all right. Then they used the fact that my allotment had been increased to 175 and as a club over me they made me take cars in cleanup when nobody wanted them.

"Senator MONBONEY. You got a lot of cars you didn't want in that period?

"Mr. MAYO. I certainly did.

Page 451:

"Senator MONBONEY. You mean there was a roadblock thrown in the way of your leasing your property to Chevrolet or to any other General Motors outlet simply because they were trying to compel you to continue on as a Pontiac dealer?

"Mr. MAYO. That is right, and also because they didn't want to make it possible for me to have any way of getting out of this thing."

Page 452:

"Now I have already discussed that we were forced into this pack.

"In June of 1954 we decided that we would fight the pack.

"They [factory] didn't like it at all, and, of course they didn't come right out and tell me I couldn't do it, but they certainly used very other device they could think of to try to stop me from doing it."

Page 454:

"Mr. MAYO. To continue, our determination to fight this merchandising technique of Pontiac Motor Division proceeded to subject us to continuing pressure from Pontiac. At the time I was at a loss to understand this apparent desire on their part to make it impossible for me to up my business. I have finally concluded it was their way of forcing me to submit to their ideas of operating, whether or not it was in my interest or the public interest. I do not believe a businessman can succeed using policies and techniques which are obviously in direct opposition to the public's interest and his own, and also his employees, policies which could not build public confidence without which any endeavor is bound to fail. This campaign on their part I can now see had begun 2 years previous to the time when it became unbearably oppressive. Their criticisms of my objecting to their procedure for handling cooperative advertising, the goon sessions—which we will cover a little bit later on—sales training projectors, in which they forced me to buy a projector to train my salesmen. Who did I have—myself and two men. I said, 'I don't need any projector to train them.'"

Page 466:

"Mr. MAYO. Now the difference to me in this sellout, doing it their way over the way I wanted to do it was \$56,000. I figured that that was just too much money for me to lose but there was nothing I could do about it. I just had to take it or leave it or quit.

"Senator MONBONEY. In other words, you said you couldn't get any other General Motors franchised dealer interested in your location for reasons which led you to believe that a roadblock was thrown into releasing your property or to establishing as a going concern your company with another operator and owner, selling perhaps another General Motors franchised car."

Page 471:

"Mr. MAYO. Now this second statement, unreasonable control by automobile manufacturers and the worthlessness of a franchise agreement. I think right there, as I have often said, this country is great because we have law and respect for law. You cannot resort to the law. I claim that because you can not resort to the law you have chaos, which is always the case when you don't have law. I think that these exhibits which we have put in here, which shows the irresponsible manner in which these manufacturers proceed, regardless of whether it is in the public's interest or anybody's interest but their own certainly shows that there is no recourse to law in this franchise because certainly intelligent men would never submit to this kind of business if they could resort to the courts.

"Senator MONBONEY. But under what appears to be unreasonable control in the management of your business, you receive no protection from the factory as to equitable distribution of cars or anything of meaningful value to the franchise because your franchised car can be bootlegged on every gravel lot in town.

"Mr. MAYO. That is right."

Page 492:

"Senator MONRONEY. You buy the tools and you buy the advertising and you buy the other things from what you say is a croney corporation, to say the least about it, and then after you have complied with other provisions prior to the signing of the contract, then you get the contract which you are allowed to sign for another year's lease on your economic life?"

"Mr. MAYO. That is right."

"Senator MONRONEY. But that always comes last, the signing of the contract. I mean the signing of the franchise?"

"Mr. MAYO. Oh, yes, you have signed your name to this stuff and you give them a check for it before the contract is signed."

IV

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Testimony of J. A. HINOTE, NADA Director, former Ford dealer, page 512:

"Mr. HINOTE. In connection with pressure used on a dealer in order to get him to do what the factory wants and to operate his business, one of the pressure tactics employed against me was that they invited me to the Continental showing in Detroit last summer, and under the assumption that we would be given the Continental contract, which we thought at that time was going to be quite valuable, I had approximately \$141,000 invested in my business but was told after this meeting that it was not enough money to justify allowing me to sell the new Continental. However, my successor, who was immediately given a Continental contract, only had an investment of \$87,500."

Page 516:

"Mr. HINOTE. False registrations are encouraged in my area by Ford and Chevrolet. As far as I know, it is confined to these two makes. I was told by a Chevrolet dealer that the factory had ordered him to falsely register cars."

Page 517:

"Senator MONRONEY. Wasn't he almost required to do that at one point?"

"Mr. HINOTE. I put it mildly when I said "requested." If he had not done it, he would have punitive measures put against him as only they know how to do it."

Pages 527-528:

"Mr. HINOTE. Mr. Chairman, I think the only thing that we have in this industry that we dealers are fighting for is the elimination of fear."

"We live in deadly fear of our factories because of the very nature of the right we sign away. We are only asking that we be made first-class citizens, not second-class citizens. We are only asking that we be accorded the same privilege of citizenship which are accorded to a saboteur or a Communist who advocates the violent overthrow of this great country of ours by force and violence if need be, and that is just our day in court. We sign away that right that is granted to every other individual in this great land of ours."

Page 534:

"Mr. HINOTE. Would we like to talk about seat covers?"

"Senator MONRONEY. Yes."

"Mr. HINOTE. They went so far with me on seat covers to hold up my monthly allotment of cars because I refused to buy seat covers because I had my own trim shop."

"Senator MONRONEY. Where did the seat covers come from?"

"Mr. HINOTE. From Detroit."

V

Volume 6: Proceedings Before the Subcommittee on Automobile Marketing Practices, United States Senate, Thursday, February 23, 1956.

Testimony of Milton Ratner, former Ford dealer, Wilmette, Ill., pages 558 to 561:

"Mr. RATNER. In October of 1954, Mr. Roberts, our regional manager, and Mr. Yando, visited our offices, which was in itself an occurrence. We discussed the new and larger sales figures with which we had been presented earlier and we again stated that these were unrealistic, and in order to accomplish them we would have to resort to dishonest and unethical sales methods. Mr. Yando then asked how I felt about the Ford business and its future, and I informed him that I intended to see these rough times through."

"You will recall in 1954 we had a rather sudden slump, in late 1954. I said I intended to see them through and be a Ford dealer the rest of my life, God willing. He responded by saying that our sales performance was improving and that as long as we were going forward and as long as he could keep Detroit off his

neck, we had nothing to worry about. He further stated that our facilities were excellent. He had made his usual review of the building, as the top officials do when they come in, and that our reputation as a dealer was everything to be desired. Believe me, it had to be good. We are on the same street that Ford Motor Co.'s midwestern branch is on, and we are only a few minutes away from them, and we were right under the gun all of the time. So our facilities and building and actions had to be good. Mr. Roberts said nothing.

"Then out of a bolt, on the second or third of January 1955, Mr. Earl Dennis, who was assistant to Mr. Yondo in the district came to our offices and informed us that a letter of termination of our contract had been sent to us from Detroit, that they had nothing to do with it, he was sorry, it was something they didn't have any control over. On January 6 we received such a letter postmarked 'Melrose Park, Ill.' which is the Chicago branch immediately referred to, a few minutes from our place. It was not postmarked 'Detroit.' We have that envelope.

"Please remember that up to this point the word 'cancellation' had never been mentioned to us, but we had been told that they, Ford, felt they needed additional dealers in Chicago and between us and the lake.

"Senator MONRONEY. What did the letter of termination say?

"Mr. RATNER. I have it here in front of me.

"Senator MONRONEY. Would you care to read it to me?

"Mr. RATNER. It is very short. 'Notice of intention to terminate. Gentlemen:—' 'it is dated January 5, 1935.' 'Ford Motor Company, 3000 Shafer Road, Dearborn, Mich.—' 'it did not come from there.' 'In accordance with the provisions of subparagraph (a) paragraph (10) thereof, notice is hereby given of the intention of the Ford Motor Co. to terminate the Ford sales agreement with you dated January 5, 1939—' 'I will explain that in a moment'—'effective 60 days from the date of receipt by you of this notice.'

"All Ford contracts were dated 1939 because in 1939 on January 5 they had written new contracts with every dealer and whether you had been a dealer for 30 years or 5 years or 5 months, your contract was dated January 5, 1939.

"Senator MONRONEY. As far as that letter goes, there is no cause.

"Mr. RATNER. There is no reason given.

"Senator MONRONEY. When they say an indefinite contract they really mean indefinite.

"Mr. RATNER. It is signed by C. J. Fellroth.

"Senator PAYNE. And you were a dealer for them for 20 years.

"Mr. RATNER. 20 years that month.

"Senator PAYNE. It is a pretty abrupt termination with no reason given."

Pages 588-590:

"Senator MONRONEY. At the time of your termination notice there was never any criticism of your relationship on a personal basis with anybody in the Ford Motor Co., or with the district or zone managers?

"Mr. RATNER. Mr. Yando and I never did get along. We never had any arguments, but I refused to participate in some of his extracurricular activities. I was a member of the sales promotion committee when we would run contests under his direction that would take salespeople to Bermuda or Havana, and the committee would go along for free with their wives, and so forth. I refused to go. And I refused to agree to the spending of hundreds of thousands of dollars each year on what I considered, and many other dealers considered, unwise projects. Mr. Yando did not like the fact that I remonstrated with him in our committee meetings that these things were being railroaded through. I don't think we ever had any differences about our business. We did have differences about our advertising and our sales promotional funds. The sales promotional fund that I mentioned a while ago was an idea of his. We had never had one.

"He had come to Chicago in 1953, called a rush meeting of what we thought were a few of the better dealers and said: 'I have had a slush fund in the districts I have been in and we are going to have one here. We will use it for sales purposes.'

"Immediately he told us that he wanted \$10 a car. We fought with him a little. I was one of the fighters. He was new to us, and we got it down to \$5 a car, to be collected by our association monthly and turned over to a treasurer, who he appointed, and he appointed the committee. He said, 'You men I have called together will be the sales promotion committee.' We were a rubber-stamp committee for the years that followed. I was a member of it all of the time until it disbanded.

"Mr. MAYO. That is right."

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"Mr. RATNER. I have it here in front of me.

"Senator MONRONEY. Would you care to read it to me?

"Mr. RATNER. It is very short. 'Notice of intention to terminate. Gentlemen:—' 'it is dated January 5, 1955.' 'Ford Motor Company, 3000 Shafer Road, Dearborn, Mich.—' 'it did not come from there.' 'In accordance with the provisions of subparagraph (a) paragraph (10) thereof, notice is hereby given of the intention of the Ford Motor Co. to terminate the Ford sales agreement with you dated January 5, 1939—' 'I will explain that in a moment'—'effective 60 days from the date of receipt by you of this notice.'

"All Ford contracts were dated 1939 because in 1939 on January 5 they had written new contracts with every dealer and whether you had been a dealer for 30 years or 5 years or 5 months, your contract was dated January 5, 1939.

"Senator MONRONEY. As far as that letter goes, there is no cause.

"Mr. RATNER. There is no reason given.

"Senator MONRONEY. When they say an indefinite contract they really mean indefinite.

"Mr. RATNER. It is signed by C. J. Fellroth.

"Senator PAYNE. And you were a dealer for them for 20 years.

"Mr. RATNER. 20 years that month.

"Senator PAYNE. It is a pretty abrupt termination with no reason given."

Pages 588-590:

"Senator MONRONEY. At the time of your termination notice there was never any criticism of your relationship on a personal basis with anybody in the Ford Motor Co., or with the district or zone managers?

"Mr. RATNER. Mr. Yando and I never did get along. We never had any arguments, but I refused to participate in some of his extracurricular activities. I was a member of the sales promotion committee when we would run contests under his direction that would take salespeople to Bermuda or Havana, and the committee would go along for free with their wives, and so forth. I refused to go. And I refused to agree to the spending of hundreds of thousands of dollars each year on what I considered, and many other dealers considered, unwise projects. Mr. Yando did not like the fact that I remonstrated with him in our committee meetings that these things were being railroaded through. I don't think we ever had any differences about our business. We did have differences about our advertising and our sales promotional funds. The sales promotional fund that I mentioned a while ago was an idea of his. We had never had one.

"He had come to Chicago in 1953, called a rush meeting of what we thought were a few of the better dealers and said: 'I have had a slush fund in the districts I have been in and we are going to have one here. We will use it for sales purposes.'

"Immediately he told us that he wanted \$10 a car. We fought with him a little. I was one of the fighters. He was new to us, and we got it down to \$5 a car, to be collected by our association monthly and turned over to a treasurer, who he appointed, and he appointed the committee. He said, 'You men I have called together will be the sales promotion committee.' We were a rubber-stamp committee for the years that followed. I was a member of it all of the time until it disbanded.

"I don't think he had the nerve to throw me off, even though I was a little of a thorn in his side. He would call us together and say, 'We need sales promotion. Have you any ideas?' Naturally, among 8 or 10 Ford dealers there were ideas. The men would expound those ideas and then he would say, 'I have one,' and he would open the door and bring in a travel agent who had a portfolio or a chart all prepared and he would say, 'Here is what I have got, and this is what it will cost. You are going to send 200 men to Bermuda with their wives. The top 50 men will get \$1,000 each, the next 50 will get \$750, etc., etc., all this will be handled through my agency, the contest starts so and so. We leave so and so. That is it.'"

VI

Volume 6: Proceedings before the Subcommittee on Automobile Marketing Practices, United States Senate, Thursday, February 23, 1956.

Testimony of Loren C. Maxwell, Lincoln-Mercury dealer, Boise, Idaho. Pages 606-607:

"Mr. MAXWELL. The practice of false registration is quite prevalent in our State. In fact, it is very prevalent. The official position of the factory is one of opposition to this practice. It is only fair to say, however, that those who engage in this practice are still carrying on as usual. Actually, the practice is illegal in my State. I was one of a group who worked on the drafting of the law and I am thoroughly familiar with its contents. The accepted practice in Boise is to increase the retail delivered price of automobiles so as to permit excessive allowance for used cars. This practice is not directly initiated by the factory but it works in this fashion: One dealer in the area will use this increment in retail delivered price and someone else will complain. The answer will be along the line of suggesting that fire should be fought with fire.

"This practice I feel sure creates confusion in the minds of the public as to the actual value of their used car and therefore the actual price that they are paying for the new car. Moreover, this practice provides the opportunity for crazy advertising which in turn provides the opportunity for crazy credit. In other words, by increasing the price of a car a wheel and deal franchise holder can insert in local newspapers advertising which offers trade-ins that are ridiculously high. Then when the fish takes the bait and finds that he cannot swallow the morsel whole there is no alternative but to ask for financing. The amount being borrowed is usually so high that the period of payment is lengthy and financing charges resultantly high.

"It is my opinion that the present practice and attitude of the factory is: volume, morning, noon, and night—there has been a definite indication that wheeling and dealing is what the factories want, and if you do not participate in it and obtain the volume they desire, they will employ any one of a countless means at their command to replace you or dispose of you."

Volume 6: Proceedings before the Subcommittee on Automobile Marketing Practices, United States Senate, Thursday, February 23, 1956.

Testimony of Roy H. Anderson, Ford dealer, Bozeman, Mont., pages 630-631:

"Mr. ANDERSON. We did, however, advise them that if they were insistent on replacing us, we would sell, providing they secured a satisfactory buyer who could meet our terms. A few weeks later a gentleman from Salt Lake City called on us and told us he was interested in buying our business and our discussion with him disclosed the fact that Mr. Reiser had recommended the purchase to him and had exposed our confidential financial statement to him.

"Senator MONRONEY. Now this statement that was supposed to be given by you as a franchised dealer to the Ford Motor Co. so that they would be apprised of your operations and your stability and your ability to pay for the goods and to continue in business, your statement was kicked around publicly to others although it had not been given to them for such purpose, is that right?

"Mr. ANDERSON. That is right. The thing about it is this man told me himself personally when I got there, and I knew him, he said, 'I told Mr. Reiser that I am looking for a good spot and we have been waiting and waiting,'—and pretty soon one day Mr. Reiser called this fellow into the office and said, 'How would you like to look at the dealership in Bozeman, Mont.? There are the statements,' he said, 'look it over and see.'

"Senator MONRONEY. It had not been given to him for that purpose?

"Mr. ANDERSON. No, they are confidential and our statements go not by Anderson Motors, but by a certain number."

Pages 634-635:

"Mr. ANDERSON. All this time when pressure was put on our dealership it was a constant worry to my brother and me.

"Now this is something I want to stress very much, and I am serious about it. "Soon after selling out my brother passed away in 1950. Senators, many many nights since the time they came in there, and my brother was very serious, he would go home very much upset, couldn't eat, couldn't relax, would come down and tell me many times that he couldn't sleep. He was that type. His life earnings were put into the place. To me I can say it and I can prove it by my wife that many times I would go home and she would have a nice dinner ready for me and I just couldn't eat. My stomach was going around and I was just nervous, but I can say that truthfully that this had something to do with my brother's death.

"Senator MONRONEY. He had given up a lifetime career in the banking business to join you in business?

"Mr. ANDERSON. That is right."

Pages 639-641:

"Mr. ANDERSON. You mentioned the other day about accessories and things. We went through all that.

Ford was great on that. At the end of the season he would send straw seat covers, spotlights, windshield washers, all of these things, at the end of the year. He sent to us without a signed order—I think ours represented \$2,300 at our cost. We were a parts distributor. We took parts from Yellowstone Park and all around. They sent those to us and we said we didn't order those. At the end of the year we never sold enough cars to use all of those.

"Senator MONRONEY. You mean you got more seat covers than you had cars?

"Mr. ANDERSON. Yes, they just sent so many. My brother was a Ford dealer in Helena, Mont. He got over \$5,000 worth. They did let him send some back. But the question is there: 'Make a good fellow of yourself.' They got the regular price but we were to sell it at what it cost us or maybe 10 percent.

"Make your neighbor over here a friend, and say, 'Here is a \$37 seat cover we will sell you for \$21.'"

"Senator MONRONEY. Were those seat covers invoiced to you by Ford?

"Mr. ANDERSON. Yes.

"Senator MONRONEY. Who made them, do you know?

"Mr. ANDERSON. Well, somebody else, but it had Ford's part number on it and Ford Motor Co. on it.

"Senator MONRONEY. You could have gotten the seat covers elsewhere?

"Mr. ANDERSON. We could have gotten them made in our place cheaper or bought them from Zink or someplace else."

VII

Volume 6: Proceedings before the Subcommittee on Automobile Marketing Practices, United States Senate, Thursday, February 23, 1956.

Testimony of John V. Booth, former Chevrolet dealer in McKeesport, Pa., pages 724-726:

"Mr. BOOTH. Much has been said about shipping cars that are not ordered. Here is an example of how it is done. I quote a paragraph from a letter I wrote to the city manager of the Pittsburgh zone on October 31, 1954 (clean-up period).

"I am returning four confirmation-to-ship slips covering cars not ordered by us and not wanted. I have requested the car distributor to divert these cars elsewhere. I would call your attention to the models covered: 1 cabriolet (we have 2 on hand and lost many orders this spring and summer because we could not get them), 1 Bel Air (we have 3 on hand), and 3 out of 4 with powerglide transmissions."

"Now I had a stock of maybe 25 or 36 cars, but here are 4 more they are just sending in because they made them, they get their full profit, and I can take them out and sell them at cost.

"Shortly thereafter I received a long-hand note from the zone manager, with slips and my original letter attached.

"If, after due deliberation, you want to return these [slips] to Chevrolet, please do so with the file intact.

"BAK."

It does not take too sharp a person to understand the veiled threat contained therein.

"They would have put that in the file and when the new model came a few weeks later I would have been cut to a nubin.

"As you are probably aware, practically all car divisions of the automobile manufacturers have a house organ or magazine which is usually mailed on a monthly basis to the dealer customers and at the dealer's expense. In Chevrolet's

case the magazine is called *Friends*. In July 1952 the dealers were informed that there had been a new *Friends* quota issued to the entire nationwide dealer organizations. As I remember, there was a desire on the part of some of the Chevrolet 'brass' to expand the distribution of *Friends* to a greater number than any publication in the country. They wanted to outlive *Life* and outsee *Look* and make a piker out of the *Saturday Evening Post*.

"Prior to this ambitious scheme Booth Motor Company had gladly subscribed for some 250 copies which were sent to clubs, schools, churches, barber and beauty shops, attorneys' offices, doctors and dentists' offices and various other places where they would be read by many people. Our new quota was approximately six times our original subscription list, as I recall it. A few of the dealers refused to send in expanded lists. I stalled for a number of months, during which time I was the recipient of a half dozen or more letters from the zone office plus as many phone calls. I quote the final paragraph of one of the letters I received on the subject:

"The writer would very much appreciate it if you would give this [the list] your attention and either have the list completed and mailed in during the next few days or advise that you do not wish to participate in this activity.

"CITY MANAGER."

"Again the veiled threat and with the building situation hanging over my head, I sent in the list.

"Senator MONRONEY. Did you order the full quota?

"Mr. BOOTH. Yes; I think I told the girls to take pages out of the telephone book."

Pages 733-734:

"Mr. BOOTH. There is another item on which I had difficulty with Chevrolet. That was the matter of accounting procedure. The factory, under their selling agreement, reserves the right to audit all dealers' books. This is done by their division known as motor accounting department, generally on a quarterly basis.

"Anytime a dealer deviated from their system he was told about it. We understand the value of uniform accounting to obtain valuable comparative figures, but we also believe our books should reflect the truth of our operation, not just to show the largest profit for the moment. We came to the conclusion that the GM accounting system was 'cocked' to reflect the highest profit from new-car sales and that a dealer could go bankrupt with his books lying to him and showing a profit.

"For this reason we made certain changes so that if we were losing money our books would reflect the fact and we would have the opportunity to correct what was wrong. On one of our last audits on which we deviated seven times, I received a letter from the city manager.—I quote his last paragraph:

"'Would you be so kind as to tell me just why you do not care to correct these deviations and thus comply with the known desire on the part of Chevrolet to have uniform accounting without deviation.'"

VIII

Volume 6: Proceedings before the Subcommittee on Automobile Marketing Practices, United States Senate, Thursday, February 23, 1953.

Testimony of W. K. Wyman, former Chevrolet dealer, Vermillion, S. Dak., pages 754-755:

"Senator MONRONEY. Was that an exclusive listing for the sale of your property to them?

"Mr. WYMAN. Yes; not exclusive. I wasn't barred from trying to find buyers; they told me to go ahead and continue to look for prospects, which I did. Well, that was in July. Nothing more was done until October and of course the calendar was running out. My franchise would expire on the 31st of October and I was beginning to sweat.

"I had sent in a couple more prospects and they didn't meet their requirements. They weren't satisfactory.

"Senator MONRONEY. On what basis, finance, personality, or what?

"Mr. WYMAN. Personalities, evidently. I asked if they would sell to my own people. No. Would they sell to a partner of mine in the implement business that had a very enviable reputation as a Chevrolet salesman and a 22-year-old boy that wanted to get into the business? They said 'no.'

"In fact, they arbitrarily turned everybody I sent in down, and along about the 4th of October I began to sweat. Nothing was done about it. Finally, I worried them so much they said well, they would come up and see what they could do about selling it. They spent a day and a half in my place and came

up with a young fellow from the Miller-Kidder Chevrolet Co. in Sioux City, a used-car manager, who did not have any money. The bulk of his money is furnished by Duane-Kidder, a partnership of the firm owning Chevrolet dealers in Sioux City, Grand Forks, and Omaha, Duane Kidder furnished the money and Kidder is operator of the Ex-Wyman Motor Co., and I was forced to sell out for \$19,500.

"Senator MONBONEY. As against \$50,000 which you had been offered by an experienced operator.

"Mr. WYMAN. That is right."

IX

Volume 10: Proceedings before the Subcommittee on Automobile Marketing Practices, Committee on Interstate and Foreign Commerce, Wednesday, March 7, 1956, United States Senate.

Testimony of W. C. Blount, Hinesville, Ga., a Chevrolet-Oldsmobile dealer, Page 1353:

"Mr. BLOUNT. I would like to state that when I asked why the small dealers couldn't have nonrecourse paper, I was told that we didn't have sufficient volume; that was one reason."

Page 1355:

"Mr. BLOUNT. As a result of this, I was forced to loosen up on credit and increase volume to be in the running. As a result of the above conditions, my contingent liability with the finance company practically doubled in about a year's time. I have asked several times to be relieved from the liability under conditions set forth in my finance company's manual and instead of being relieved, I have been asked to personally guarantee my corporation's liability.

"Senator MONBONEY. In other words, you endorse it as a corporation?

"Mr. BLOUNT. Yes, sir.

"Senator MONBONEY. Then you must take personal liability beyond the corporation liability and the security of the car.

"Mr. BLOUNT. That is right."

Page 1373:

"Senator MONBONEY. In other words, they wanted you to take on more questionable risks in order to build General Motors volume, but then they wanted you to sign away your furniture or your home as the credit responsibility for those very accounts they were urging you to take on?

"Mr. BLOUNT. Yes, sir. I would like to say that in looking around for other finance companies I have found that that is the practice now with all of the major finance companies when it comes to financing the small dealers. I also have a paper here that you may have from the Commercial Credit Corp., their form of guaranty.

"Senator MONBONEY. That is the personal guaranty beyond the corporation and the mortgage of the car?

"Mr. BLOUNT. Yes, sir.

"Senator MONBONEY. In other words, you finally stand the brunt of this competitive raise to get the brass ring every month. It is your money?

"Mr. BLOUNT. That is true.

"Senator MONBONEY. How about your contingent liability on this paper? What does it amount to? Has it increased?

"Mr. BLOUNT. As stated, my contingent liability in the past year practically doubled. As of now I believe I have approximately \$480,000 outstanding with the finance company; that is, contingent liability, and my reserve with the finance company at this time is \$29,861.35."

APPENDIX B TO STATEMENT OF SENATOR A. S. MIKE MONBONEY, DEMOCRAT, OF OKLAHOMA, BEFORE NO. 5 SUBCOMMITTEE OF THE HOUSE JUDICIARY COMMITTEE

[Excerpts of testimony by automobile dealers concerning coercion and intimidation by manufacturers given before the Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary (84th Cong., 1st sess.) (Summaries compiled by the staff of that Subcommittee.)]

I

TESTIMONY OF J. ED. TRAVIS, JR., TRAVIS SERVICE CO., ST. CHARLES, MO., PONTIAC-OLDSMOBILE-BUICK, AND GMC TRUCK DEALER

Mr. Travis, at the suggestion of General Motors, constructed additional showrooms and added service facilities to the point where his investment was a quarter of a million dollars (vol. 7, p. 3238).

The factory supervised Mr. Travis' business to the extent of suggesting that he was doing too many "minor tuneups." This suggestion carried the connotation that the public should be "pressured" into buying "major tuneups." The latter would, of course, be more expensive, thereby raising labor and part sales to a place where they would be more in line with factory expectations (vol. 7, p. 3253).

The zone manager criticized and harassed Mr. Travis on many occasions concerning the amount of profit he should make on a car, telling him he should sell more cars and make less profit per unit (vol. 7, p. 3254).

Notwithstanding the fact that his franchise was not renewed, the factory still continued to exert pressure by renting his building for an inadequate consideration, which he was free to accept, or permit his building to stay empty (vol. 7, p. 3258).

II

TESTIMONY OF S. W. FRASER, BILLINGSLEY MOTORS, PORTLAND, OREG., PONTIAC DEALER

Mr. Fraser was supervised by the factory to the extent of interference with the number of salesmen and other personnel employed, including the management and sales policy of the dealership. If these suggestions were not followed in accord with General Motors' requirements, the franchise would be nonrenewed (vol. 7, p. 3273).

In the improvement program above suggested by General Motors, this independent businessman increased his sales force by over 100 percent. Still they were not satisfied (vol. 7, p. 3275).

This dealer was criticized severely by Pontiac for the failure to sell a certain number of automobiles per month (vol. 7, p. 3283).

This dealer complained that when he needed automobiles the factory failed to furnish them; and, when he did not need cars they shoved them on him (vol. 7, p. 3283).

The factory also suggested that Mr. Fraser sell more automobiles and make less profit, notwithstanding the fact that his per unit profit at the time was approximately \$12. (vol. 7, p. 3288).

III

TESTIMONY OF MILLER KAMINSKY, CHATHAM MOTOR CO., INC., SAVANNAH, GA., CADILLAC-PONTIAC DEALER

The factory complained that Mr. Kaminsky did not have large enough facilities to adequately handle the dealership. Mr. Kaminsky agreed to increase his facilities and made substantial expenditures toward this expansion. This dealership was canceled in spite of his willingness to invest additional capital (vol. 7, p. 3304-3305).

The factory, pursuing this expansion program, suggested that this dealership abandon a \$200,000 building, move to a new location and construct a new plant costing approximately \$250,000 (vol. 7, p. 3305).

Mr. Kaminsky was frequently pressured to take more cars, even though the total number of units sold by him per month was above national average. "Pressure was also applied to 'put on more salesmen,' 'spend more money'—they always could find a way for us to spend our money." They also threatened him with cancellation of his franchise (vol. 7, p. 3308).

Mr. Kaminsky tried to order cars without frills and accessories, but the district manager would return the order and demand that he order more accessories. He would then change the order (vol. 7, p. 3309).

This dealership was pressured, coerced, and intimidated into purchasing one-half carload (40 tons) of body undercoating, notwithstanding the fact that the dealership had no facilities for undercoating and had no intention of going into the undercoating business. This cost the dealership approximately \$1,700 (vol. 7, p. 3310).

Mr. Kaminsky testified that he was pressured into purchasing some 90,000 postcards at an expenditure of several thousand dollars to advertise used cars. He had no used car problem, did not anticipate one but was still forced into purchasing the same (vol. 7, p. 3310).

IV

TESTIMONY OF LEE C. ANDERSON, LAKE ORION, MICH., BUICK-PONTIAC-CHEVROLET DEALER

At the suggestion of General Motors this dealership increased its facilities to the point where it was worth several hundred thousand dollars to "properly house and protect the franchise" (vol. 7, p. 3315).

Mr. Anderson was canceled, according to his own testimony, and, which was not rebutted by General Motors, because he made a speech in which he criticized the so-called factory discount plan sponsored by General Motors. This plan enabled a specified number of factory employees to receive cars at wholesale price, which, in turn, reduced this dealer's opportunity to properly penetrate the market in his area.

Twenty days after the speech, this dealer simultaneously received similar letters from all divisions telling him that his franchises would not be renewed. This was done without prior complaint on the part of the factory (vol. 7, p. 3327).

V

TESTIMONY OF JAMES T. HAMRICK, MOBILE, ALA., OLDSMOBILE DEALER

Mr. Hamrick testified that he was instructed by the zone manager to construct a body shop at a cost of approximately \$36,000. As bait for this expansion he was promised an increased allotment of new automobiles (vol. 7, p. 3352).

Mr. Hamrick was also "encouraged" to purchase additional real estate at a cost of \$28,000 (vol. 7, p. 3357).

Mr. Hamrick also complained bitterly about being chastised by General Motors because he "borrowed" \$21,000 of his own money from his dealership without GM's consent (vol. 7, p. 3363).

Mr. Hamrick estimated that the annual cost of gimmicks, advertising materials, including a \$400 rug for his showroom, and other unwanted items, amounted to approximately \$2,000 per year (vol. 7, p. 3368).

He also resented the fact that on several occasions he was "ordered" to contribute toward gifts for General Motors employees (vol. 7, p. 3369).

VI

TESTIMONY OF SUMPTER T. PRIDDY, JR., WAVERLY, VA., CHEVROLET-GMC TRUCK DEALER

Mr. Priddy testified that the factory's representative suggested that he should falsely register all cars he had in stock, as well as those to be received, before they were sold. The purpose of this, of course, was to falsely represent to the public that Chevrolet was in first place nationally in sales (vol. 7, p. 3370).

Joseph Fine, Chevrolet representative, suggested to Mr. Priddy that "it might not be a bad idea if some of these cars find their way to the used-car lot." This suggestion meant factory-sponsored bottlegging (vol. 7, p. 3382).

A factory representative told Mr. Priddy that if he would order trucks he would in turn receive more automobiles (vol. 7, p. 3385).

VII

TESTIMONY OF DON B. ROBBINS, ROBBINS MOTOR CO., FORT SMITH, ARK., BUICK DEALER

Mr. Robbins testified that the factory shipped him cars "in a ratio satisfactory to their profit requirement" instead of filling his orders for cars he needed and wanted. "This resulted in an inventory based partially on my requirements but equally on the manufacturer's dictates." as a consequence, he was left with an oversupply of models he was under pressure to sell.

He further testified that he was required to purchase accessories on automobiles beyond his requirement (vol. 7, p. 3390).

He also testified that he could save \$220 per load on cars by employing his own hauler to transport cars from Flint, Mich., to Fort Smith, Ark. The factory summarily denied him permission to do this. The result is phantom freight (vol. 7, p. 3390).

Mr. Robbins testified that there were many occasions when General Motors' zone or district officials pressured him to take parts, accessories and other supplies. This included chandelier dangles, billboard advertising and other basic gimmicks (vol. 7, pp. 3391-3392).

Mr. Robbins testified that the principal criticism he was subjected to was that he had failed to secure market penetration. In his area "there have been 8 stimulator dealers in a radius of 100 miles drawn around Fort Smith and that 7 out of these 8 dealers have gone out of business" (vol. 7, p. 3396).

Mr. Robbins said that he was required to falsely register automobiles. It was also suggested to him that he lower his gross profit per unit and sell more automobiles (vol. 7, p. 3397).

VIII

TESTIMONY OF M. L. WARD, ALBANY MOTOR CO., ALBANY, GA., CHEVROLET DEALER

"The thing is, I was canceled out because I was not getting as many new-car sales and registrations as they thought I should have. I was canceled in my town,

my contract was not renewed because I was not outregistering my Ford dealer, and was making too much money for myself and not enough for the Chevrolet Motor division. That was the thing they told me" (vol. 7, p. 3399).

He, too, was asked to sell more cars than he thought could be profitably sold. And was required to buy advertising material which, in his own judgment, was unneeded and unwanted (vol. 7, p. 3400).

IX

TESTIMONY OF EDGAR H. ZIMMER, 4405 DONOVAN AVENUE, ST. LOUIS, MO., BUICK DEALER

He testified that the factory was demanding too much volume with too little profit and was insisting on false registration on automobiles.

General Motors also tried to tell Mr. Zimmer where he could sell his automobiles and dictate the price that he should receive (vol. 7, pp. 3400-3401).

General Motors dictated and supervised the sale of this dealership, though it belonged to Mr. Zimmer, to his detriment.

X

TESTIMONY OF ELDEN E. CONRAD, SPRINGFIELD, OHIO, PONTIAC DEALER

The reason given for Mr. Conrad's disenfranchisement was that he made too much money and was 54 years of age (vol. 7, p. 3423).

Mr. Conrad was coerced into selling his business to a person sponsored by General Motors. As consequences of this, he lost several thousand dollars on the transaction (vol. 7, p. 3423).

XI

TESTIMONY OF J. B. SILAZ, JR., CONWAY, ARK., OLDSMOBILE DEALER

Mr. Silaz testified that he was coerced into purchasing a multiplicity of items including parts, accessories, special tools, banners, and other display items which he did not want, had no use for, and, in many instances, still has in storage (vol. 7, p. 3473).

Mr. Silaz complained that most of this pressure was applied during the "recontracting period." His testimony was that if a major percentage of these items described above were not purchased, a dealer stood little, if any chance, of getting his franchise renewed. Mr. Silaz was also severely criticized because the district manager saw parts in his bins not sold by General Motors. It was Mr. Silaz's opinion that as an "independent businessman" he should not be forced to purchase strictly from General Motors (vol. 7, p. 3476).

XII

TESTIMONY OF ED HAMMER, SHERIDAN, WYO., CHEVROLET-OLDSMOBILE DEALER

Mr. Hammer testified that he was told to sell and outregister the Ford dealer in his town. The Ford dealer was told the same. This meant, of course, that there could not be a tie and someone automatically had to go. He did not outsell Ford and was on his way out (vol. 7, p. 3480).

Mr. Hammer also testified that he put his entire life savings of \$110,000 into a building which he could use for no purpose other than the operation of an automobile dealership (vol. 7, p. 3479).

He also stated that he was under pressure to falsely register automobiles (vol. 7, p. 3480).

The CHAIRMAN. Thank you very much, Senator.

We are always glad to have you with us.

Senator MONRONEY. Thank you, and I appreciate the committee giving me this time.

The CHAIRMAN. We have two more witnesses, William Hufstader, vice president of General Motors and Mr. Halvorson of the National Grange.

Will you step forward, gentlemen?

It is now 5 o'clock and I do not know whether you prefer to continue or whether the members wish me to continue or whether we should adjourn over until tomorrow afternoon?

What do you prefer?

Would it be agreeable, Mr. Hufstader, for you to appear say at 2:30 tomorrow afternoon?

Mr. HUFSTADER. Entirely, sir.

The CHAIRMAN. I am sorry we have to ask this of you but the committee has been in session since 10 o'clock and it is rather hard to sit here all day as you can well appreciate.

It is even tiresome for you to listen.

Mr. HUFSTADER. It is very educational, I might add.

The CHAIRMAN. We will meet tomorrow at 2:30 and that will be the same for Mr. Halvorson.

Mr. Reporter, the statement of Mr. Weaver of Nebraska will be incorporated in the record at this point.

(The prepared statement of Hon. Phil Weaver is as follows:)

I am Phil Weaver, Congressman from the First District of the State of Nebraska and I wish to thank you, Mr. Chairman, for the opportunity to appear before your committee and to express myself upon H. R. 11360 and S. 3879—two bills which your committee has under consideration at this time.

It has been with considerable interest that I have followed the introduction of approximately 3 dozen bills during the present session of Congress affecting the automobile industry in one form or another. Previous to this occasion I have appeared before other committees of Congress and testified in behalf of some of the pending legislation.

I mention these facts to indicate to you that my interest in the welfare of the automobile dealers of my own congressional district, in my State, as well as throughout the Nation, is not merely a casual matter nor of recent origin with me.

Not only have I gained a considerable amount of information as a result of following the developments that have taken place in Congress in connection with this legislation, but I also have a personal knowledge of a great deal of the matters which have been brought to the attention of Congress because of my personal experience as an automobile dealer. I am convinced, Mr. Chairman, that your bill, H. R. 11360 and S. 3879, the O'Mahoney bill, are much needed legislation and will make a marked contribution to improved conditions within the automobile industry which, of course, would have a most desirable effect upon the entire economy of our Nation.

I must say, Mr. Chairman, it is inconceivable to me how any intelligent, fair-minded person could oppose this legislation.

The history of the industry makes it apparent that such legislation is needed and needed at once. The facts are actually quite simple and may be clearly stated. The situation is this, as I know it to be and as I understand it to be.

At the present time dealers are denied the right to have their day in court. Conditions have existed in the past as found by the Federal Trade Commission, in its study and report in 1939, which would have justified—had the privilege existed—in certain aggrieved cases dealers who had been damaged by the conduct of their factories, of going into court and having the merits of their case adjudicated by a free and independent tribunal.

It was hoped that as a result of the FTC study in 1939 and its report highlighting the difficulties that existed, that some action would be taken either within the industry or by the Government, to bring about the desired changes.

After the elapse of 17 years, we find ourselves today in relatively the same position that we were in in 1939. So, it is apparent to any careful observer that the oft repeated cliché of "let the industry solve its own problems within the family" is nothing in the world but a hollow phrase.

The factories have not made the changes that they could have had they desired to do so. Their failure to do so indicates a lack of desire on their part to bring about the necessary and desirable changes.

Government has done nothing about correcting these conditions. There has been no indication that the Federal Trade Commission has any intention of correcting these conditions. The Department of Justice has indicated that it is sympathetic to some of the problems of the dealers but that within the present structure of the law they are unable to do anything to help them.

The Federal courts have indicated that the relationship between factory and dealer is an inequitable one as a result of the inequitable franchise which the factory has drawn and the dealer has entered into, and therefore the purpose of the present legislation, as I conceive it to be, is to remove this long-standing inequity.

This legislation has been supported and is presently supported by the voluntary action of dealers acting through their elected representatives in NADA.

Quite recently a wave of opposition has developed to this legislation which has been brought about from what I have observed to be misinformation or incomplete information on the part of those opposing it.

The incomplete information has resulted in interpretations being placed upon this legislation which I do not detect to be present in the wording of the legislation.

The misinformation has been brought about by confusing this bill with the language of other pending legislation before Congress and imputing to this legislation the results that might inure to the passage of other legislation.

As I have already stated, Mr. Chairman, it is inconceivable to me that any dealer who clearly understands the substance of this bill could be opposed to it and I am sure that if a thorough knowledge of this bill was had by every dealer and if every dealer in America was a free agent to express himself without fear of coercion or intimidation or arbitrary action on the part of his manufacturer that he would genuinely favor and support the legislation.

Certainly that is my position and I am sure that I can say that it is the position of the dealers of my congressional district and I know it to be the sentiments expressed by the vast majority of dealers who have made their position on your bill known to me.

I urge that this committee give immediate and favorable consideration to reporting this legislation to the floor so that we may have the opportunity of passing it before the adjournment of this present Congress.

I wish to express my appreciation to you and to your committee, Mr. Chairman, for affording me the opportunity of appearing before you and expressing myself with respect to this legislation which your committee has devoted so much time and study to.

I thank you.

The CHAIRMAN. The committee is now adjourned until 2:30 tomorrow afternoon.

(Whereupon, at 4:55 p. m., the subcommittee was adjourned, to reconvene at 2:30 p. m., Tuesday, July 10, 1956.)

AUTOMOBILE DEALER FRANCHISES

TUESDAY, JULY 10, 1956

HOUSE OF REPRESENTATIVES,
ANTITRUST SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to recess, at 2:30 p. m., in room 346, Old House Office Building, Hon. Emanuel Celler (chairman of the Judiciary Committee) presiding.

Present: Representatives Celler, Rogers, Rodino, Quigley, McCulloch, Keating, and Scott.

Also present: Herbert N. Maletz, chief counsel; Kenneth R. Harkins, cocounsel; and Thomas H. McGrail, assistant counsel.

The CHAIRMAN. The committee will come to order.

The Chair would like to place in the record a communication from the Secretary of Commerce, which counsel will read.

Mr. MALETZ. This is to the Honorable Emanuel Celler, chairman, Committee on the Judiciary.

JULY 9, 1956.

DEAR MR. CHAIRMAN: This is in reply to your request dated May 31, 1956, for the views of the Department of Commerce with respect to H. R. 11360, a bill to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover twofold damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

The Department of Commerce opposes enactment of this proposed legislation.

If enacted, this bill would state it to be the duty of automobile manufacturers to "act in good faith" in all dealings or transactions with their franchised dealers, and would enable dealers to recover twofold the damages sustained by them by reason of the failure of manufacturers to act in good faith in administering, terminating, canceling or not renewing franchises.

Although in the past there have been complaints from automotive dealers that under the terms of dealer franchise agreements manufacturers could arbitrarily terminate a dealer's franchise without any recourse by the dealer for the loss of the value of the franchise and the capital investment in property and equipment, the automotive industry has in recent months taken substantial steps to provide greater protection for dealer franchise agreements. The normal term of franchise agreements has been extended, and dealer councils have been set up to provide a procedure for handling any problems arising in relation to franchise agreements. These steps, we feel, have gone a long way toward correcting whatever inequities have previously existed.

In view of the above, we do not feel that there is any need at this time for any legislative action imposing any new terms or conditions upon automobile manufacturers or dealers in their franchise relationships. The situation is now well in hand, and the industry can, we are sure, work out its own problems without Federal intervention. Further, the proposed legislation would raise numerous problems of interpretation and would undoubtedly create confusion in franchise relationships between automobile manufacturers and dealers. Rather than solve

existing problems, this legislation would, we feel, create a number of new ones.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report to your committee.

Sincerely yours,

SINCLAIR WEEKS,
Secretary of Commerce.

The CHAIRMAN. That will be accepted for the record.

The Chair wants to place in the record a long telegram received from the chairman of the board of National Sales Executives.

Our first witness this afternoon is Mr. Hufstader, vice president of General Motors.

Mr. HUFSTADER. May I, Mr. Chairman, first present our associates here, Mr. A. F. Power, assistant counsel at General Motors, and Mr. Robert Nitschke, of the legal staff of General Motors.

The CHAIRMAN. We welcome you all, sir.

Mr. HUFSTADER. Thank you, sir.

Mr. McCULLOCH. Mr. Chairman, at the risk of being impolite, which I have no intention of being, I would be glad if this message would be read by counsel, in view of the reading of the other message that has been read. If you will please bear with me in making that request, Mr. Hufstader.

Mr. HUFSTADER. Certainly, Congressman.

Mr. MALETZ. This is to Hon. Emanuel Celler, chairman of the Committee on the Judiciary, Washington, D. C.:

As chairman of the board of National Sales Executives which represents distribution in all fields through 28,000 members in all 48 States, urge your committee to avoid precipitous action on H. R. 11360 despite proposed amendments to S. 3879, the O'Mahoney so-called automobile dealers day in court bill which passed the Senate on June 19, 1936.

We believe the implication of this type of legislation goes far beyond the automotive business is inherently in conflict with the fundamental right and discretion now safeguarded under national antitrust policy of an individual manufacturer in selecting persons with whom he desires to deal and to refuse to continue business relationships for justifiable economic and business reasons.

H. R. 11360, like S. 3879, would introduce a dangerous precedent for interfering with this hallmark of a free enterprise system of distribution.

These bills would tend to prevent manufacturers from adjusting their policies and decisions to change in production and prices as determined by competitive forces in open markets. They would deprive manufacturers of their discretion to upgrade efficiency and economy in methods of distribution by judging for themselves the quality of performance of their marketing outlets and their merchandising methods.

There is the danger that this type of legislation will have the effect of obligating manufacturers to guarantee or subsidize their dealers' investment values markups and profit margins.

Irrespective of the merits of the particular interests involved we believe that no group of persons should be artificially sheltered from the disciplines of competition to which our antitrust laws are dedicated. We believe any deviation from this concept would result in reduced employment and higher prices for consumers and would therefore create a negative impact on living standards.

Moreover, these bills raise grave constitutional issues with respect to the fifth amendment guarantee of freedom of contract, including freedom of bargaining and to discontinue business relations. We believe that mutuality of rights obligations and consideration can be best achieved in accordance with our traditional liberty of contract. We are convinced that these bills would subvert the essentials of competitive enterprise and are contrary to the public interest.

We respectfully request insertion of this statement in the record of your hearings on H. R. 11360.

TONY WHAN,
Chairman of the board, National Sales Executives.

The CHAIRMAN. All right, Mr. Hufstader.
Mr. HUFSTADER. Thank you.

STATEMENT OF WILLIAM F. HUFSTADER, VICE PRESIDENT, GENERAL MOTORS; ACCOMPANIED BY A. F. POWER, ASSISTANT GENERAL COUNSEL, AND ROBERT A. NITSCHKE, COUNSEL

Mr. HUFSTADER. My name is William F. Hufstader. I am a vice president of General Motors Corp. in charge of the distribution staff.

I am appearing before this committee to present the position of General Motors Corp. in opposition to House bill 11360, as well as Senate bill 3879 as finally amended and passed by the Senate.

In this connection I would like to make reference to the report submitted to the Senate by the sponsor of that bill, as well as to the remarks made in the Senate in connection with the consideration of the bill.

Generally, the bills provide that franchised automobile dealers may bring suit in the district courts of the United States to recover damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises, or in terminating or not renewing franchises with their dealers.

"Good faith" is defined as the duty of each party to any franchise and all officers, employees, or agents to act in a fair, equitable, and non-arbitrary manner so as to guarantee such other party freedom from coercion, intimidation, or threats of coercion or intimidation, so as to preserve all equities of such other party which are inherent in the nature of the relationship created between such parties by such franchise.

In the report submitted to the Senate by the sponsor of the bill, it is stated that the bill has been properly characterized as a day-in-court bill.

The report further states that the legislation has several purposes, in that it creates causes of action where none previously existed, affirmatively imposes a duty of good faith in certain situations upon the manufacturer in addition to any obligations existing under the franchise, and permits a review by the courts of disputes between factory and dealer where the issue will be the good faith of the factory in complying with or in terminating or not renewing the franchise.

In the section of the report dealing with the automobile franchise, the following statements appear :

While franchises among manufacturers differ and have been the subject of various changes over the years, they have generally provided for termination by either party without cause, or at will, or for causes determinable solely by the manufacturer.

In other instances, as in the recent case of General Motors, the franchise existed for a very brief period of time. These short-term franchises left the dealers completely dependent upon the whim of the manufacturer for renewal. Dealers seeking redress for grievances under these franchises found themselves effectively foreclosed in attempting to bring suit upon the franchises.

The terms of this one-sided document compelled the courts to conclude that, however inequitable the consequences, the dealer executing such a franchise had, for all practical purposes, surrendered his right to litigate his grievance. This has been the prevailing view of courts, both Federal and State, in passing upon suits filed by dealers under the franchises.

In support of these statements, the report cites two cases and quotes from the opinions of the courts. Counsel advises me that the first of these cases was decided in 1933, and involved an agreement which by its express provisions could be terminated at any time at the will of either party by written notice.

The second was decided in 1925, and the principal issue relating to the contract between a manufacturer and a dealer was, whether the contract was one of agency or of sale, and the court held it to be the latter.

Under the heading, "The 'Good Faith' Concept" the report states that while a fiduciary relationship seems to characterize the dealings between manufacturers and car dealers, "nevertheless courts have been loath to require a duty of good faith on the part of the manufacturer."

In support of this statement, a case decided in 1940 is cited and quoted from, but again counsel advised me that this involved an agreement which could be terminated at any time at the will of either party by written notice to the other party.

This report accompanying the Senate bill made no reference whatever to the 5-year-term selling agreement which was recently made available to all General Motors dealers and which includes many changes and new provisions creating important benefits for the dealers, although it was publicly announced and explained in detail in February to be effective March 1, 1956.

The CHAIRMAN. Will you put that formal contract in the record?

Mr. HUFSTADER. We will later. We submit it, Mr. Chairman, in the statement.

Mr. POWER. We have the copies here.

Mr. HUFSTADER. We have the copies; yes.

Mr. HARKINS. Mr. Hufstader, under your new procedures you have a 5-year agreement cancellable by GM only for cause; is that not right?

Mr. HUFSTADER. That is correct.

Mr. HARKINS. You also under this new procedure offer your dealers a 1-year agreement cancellable by GM only for cause; isn't that true?

Mr. HUFSTADER. That is correct.

Mr. HARKINS. And you have a third arrangement whereby General Motors offers the dealer an indefinite term agreement cancellable by GM without cause on 90 days' notice?

Mr. HUFSTADER. That is right.

Mr. HARKINS. Of these three choices that are offered to your dealers, which is the one preferred by the dealers?

Mr. HUFSTADER. If counsel will permit me, I cover that very completely in this statement.

Do you mind? I will get to that and cover your point, I believe, in detail, and answer your question, sir.

May I proceed?

The CHAIRMAN. Yes; you may, sir.

Mr. HUFSTADER. Certainly if any member of the Senate committee which unanimously reported out the Senate bill without hearings, relied solely on that report, he did not have the complete picture of the dealer-factory relationship situation, as it exists today, at least in General Motors.

When the bill was discussed on the Senate floor, the sponsor made the following statements—

The CHAIRMAN. I want to say this. I think in the Senate Judiciary report, reference was made to these new forms of dealer contracts. The statement was made that the dealer contracts could be changed by the manufacturer but if there were a statute, then the manufacturer could not change the contracts except in accordance with the statute.

Mr. HUFSTADER. That is right.

The CHAIRMAN. That was in the Senate, I think.

Mr. HUFSTADER. I think we address ourselves to that point later on.

The CHAIRMAN. I think this point was made on page 6 of the Senate report.

Mr. HUFSTADER. I think we cover that in our statement, Mr. Chairman, we address ourselves to that point.

The result is that in the bill which is being considered by the Senate today the dealer for the first time is given his day in court. The proposed legislation creates a cause of action in the Federal courts where none previously existed.

Because the franchises with which we are dealing are not contract; they are terminable at the will of the manufacturers.

No; in many cases they are merely a kind of license because of the distribution of economic power as between the two parties involved. Moreover, the franchises are not presently enforceable. The committee has a whole list of cases in which that question was decided by the courts.

The sponsor acknowledged that great modifications have been made by the manufacturers, and added—

but without the day-in-court bill there would be nothing to prevent the manufacturer from restoring ipse dixit the conditions which previously existed.

The sponsor of the legislation in connection with his discussion of the proposed bill referred to the telegram sent by the president of General Motors Corp. to General Motors dealers in December 1955, extending the franchises from 1 year to 5 years, and also referred to the testimony before the Monroney committee in May 1956 in which the changes incorporated in the General Motors revised selling agreement were listed.

Another Senator in support of the proposed legislation when it was under discussion by the Senate made the following statements:

Yet there is, in practically every major contract existing today in the automotive industry, provision for economic loss of life in 90 days.

But the No. 1 complaint was about contracts. The dealers fear the 90-day death sentence. Contracts still carry that clause, making the contracts subject to cancellation in 90 days, at the option of either party. It means that, no matter how much the local dealer's investment is, no matter how many years he may have been in the business, no matter how much inventory he may be carrying, no matter how many employees were with his company, no matter whether his entire investment had been dictated by the factory—even down to the location in the block—the manufacturer, for no reason whatsoever, if he so chooses, can cancel out the dealership in 90 days. Such contracts exist still today in the automobile-distributing business.

This Senator also acknowledged that there has been a change in conditions by stating:

The manufacturers now have corrected most of the abuses. But how long can we be sure they will remain corrected, especially in a difficult competitive condition in a bad automobile year, such as the present one?

However, as he discussed the bill further he made the following statement:

Perhaps anyone can sue now, but under the peculiar terms of most of the present franchises, a dealer who brings the kind of suit to which we have been referring is thrown out of court almost on the day he comes into court.

While there was acknowledgment in the discussion in the Senate that manufacturers had corrected most of the abuses and that General Motors now had a 5-year-term contract, the emphasis placed on some of the statements quoted above, has created confusion and misunderstanding as to the situation as it exists today, at least with respect to General Motors dealers.

Mr. KEATING. May I interrupt? Or did you ask not to be interrupted?

Mr. HUFSTADER. No; I did not, Congressman Keating.

Mr. KEATING. You now have a straight 5-year contract that is not cancelable at will?

Mr. HUFSTADER. It is cancelable for cause.

Mr. KEATING. For cause only?

Mr. HUFSTADER. For cause.

Mr. KEATING. Not cancelable at will?

Mr. HUFSTADER. No, sir.

The CHAIRMAN. That is the 5-year one?

Mr. HUFSTADER. That is correct. Also, Congressman Keating, the 1-year contract is cancelable for cause only.

Mr. KEATING. Previously when all this business started you had a contract which was cancelable at will; is that right?

Mr. HUFSTADER. No, sir. Since 1944 we have had a 1-year contract cancelable only for cause during the term of the contract.

The CHAIRMAN. You now have one form of agreement which is cancelable without cause on 90-day notice?

Mr. HUFSTADER. That is right. We have three different—we will explain all this in our statement in considerable detail.

Mr. KEATING. That is a dealer's option?

Mr. HUFSTADER. That is correct. They are being offered the different selling agreements, and we will explain what they are accepting in numbers as of the current figures available.

In view of the statements made in the report and in the discussion of the bill on the Senate floor, I consider it important that the principles and factors involved in, and giving rise to, the franchise relationship, as well as the evaluation of the franchise agreements over the years, be fully understood.

In a hearing before a Senate subcommittee in March of 1956, Mr. Curtice differentiated between the automobile manufacturer-dealer relationship and the relationship between other retailers and their sources of supply, and characterized it as unique. He pointed out: That a high degree of interdependency exists between the manufacturer and the dealer; that the dealer is not legally the agent of the manufacturer but that he is regarded as the manufacturer's "representative"; that the dealer's business success depends importantly upon the quality and value of the product which he purchases from the manufacturer; that the manufacturer's success is determined in substantial degree by how well the dealers perform their functions; that the automobile is a highly complex mechanical product operated daily by millions of persons without mechanical knowledge and skill; that today the dealer who sells a new car must generally purchase the customer's used car in trade; that facilities must be provided by the dealer to service the car throughout its useful life; that facilities and organizations required by the dealer to display, sell, and service automobiles represent a substantial investment; that the manufacturer requires substan-

tial investment in an organization to design and produce progressively better cars in volume; that the personal element is inherent in the relationship between the manufacturer and the dealer; and, finally, that because of these factors and their importance in promoting the success of both the dealer and the manufacturer, the franchise relationship had been evolved as the approach best suited to the sale and service of the product involved and to the mutuality of interests existing between the manufacturer and the dealer, under the free-enterprise system and existing laws.

Referring now to the establishment of that relationship, the agreement between the manufacturer and the franchise holder sets forth the conditions governing the purchase at wholesale of automobiles by the dealer. However, it does not include provisions regarding maximum and minimum quantities of merchandise to be furnished or purchased. In a mass production industry such as the automobile industry, provisions of this kind would be burdensome, and extremely hazardous for both manufacturer and dealer—much more so for the dealer. Few, if any, dealers have available the information and data—other than such as pertain to their local situations—to make a reasonably accurate estimate of their requirements a year in advance.

A feature unique in the franchise approach, and not present in other manufacturer-independent merchant relationships, is the assistance rendered the automobile dealer by the manufacturer. This includes technical help and programs in phases of the dealer's business such as sales and servicing, advertising, business management, factory training of mechanics, warranty products service programs. The nationwide network of General Motors service training centers is an outstanding example of such assistance. These types of cooperation involved substantial expenditures by the manufacturer.

All enterprise involves risk and this is as true of automobile retailing as it is of automobile manufacturing. The dealer, sometimes assisted by the manufacturer, provides capital for his facilities. By virtue of its nature this investment remains reasonably stable.

In the normal business cycle it should fluctuate only with expansion and growth. Hence it is reasonably permanent, capable of liquidation without undue loss if established on a sound basis initially and if its value is properly reflected on the books. In other words, the enfranchised dealer has the normal investment risk undertaken by anyone who enters into a business for a profit.

A greater risk assumed by the dealer is his complete reliance upon the manufacturer to supply him with a salable product that has customer appeal. The dealer's profits are satisfactory, or less than that, depending upon how well he controls his operating costs and expenses. But the opportunity for profit is created by the manufacturer in the first place. Unless the manufacturer supplies a product that appeals, that has value, and sells in appropriate volume, there will be no profit for either.

The manufacturer bears these same risks of investment and of ability to produce a salable product. In addition he assumes several other types of risk. One is high annual tooling costs. These can be recouped only if the product is properly priced, if it is accepted by the public, and if the enfranchised dealer efficiently sells and services the product. These conditions must be met each year, year after year, if existing

customers are to be retained and new ones secured. To gamble with customer good will is to put at risk the very existence of the business.

Mr. KEATING. That I would like to have underlined for all automobile manufacturers and dealers, that last sentence.

Mr. HUFSTADER. Yes. We feel that is a very definite concept and a proper concept.

Other obligations of the manufacturer flow from the warranty of his product and from legal liabilities in the event a defective part or careless workmanship in the assembly of the product results in property damage or personal injury. The manufacturer is liable even if a supplier is solely responsible for the faulty part.

Recognizing the value of the franchise system, over the years General Motors constantly sought to improve its factory-dealer relationships with changes and additions in its selling agreements and in its policies.

In the early days of the automobile industry some cars were purchased by distributors and dealers for display and sale purposes but many cars were purchased for delivery against retail orders in hand. The distributor or dealer was generally the exclusive representative of the manufacturer in a specified area. Because the distributor or dealer was regarded as the manufacturer's representative, the dealership was generally referred to as an agency for the manufacturer or for his make of cars.

The CHAIRMAN. Mr. Hufstader, I find it a little difficult to reconcile what you are saying now with what you said previously before the Senate Antimonopoly Subcommittee, volume 7, page 3681, as follows. This is your language :

It is the manufacturer who creates the franchise in the first place. Hence, he should be in the position to dispose of it. This ability to dispose cannot in any sense be shared with the dealer. The manufacturer must be in a position, based on his judgment and his judgment alone, to retain the franchise, to grant it, or to withdraw it.

That seems to imply that it was your opinion then that the manufacturer was in complete control of that situation, and that the franchise was his to create, change, dispose of, or cancel.

Mr. HUFSTADER. Well, I think the same theme is running through that I have just read, Mr. Chairman. I am trying to point out the franchise relationship. And wasn't that a statement that was made before the O'Mahoney committee?

The CHAIRMAN. Yes.

Mr. HUFSTADER. Yes. I think that—

The CHAIRMAN. That statement seems to imply that the manufacturer is completely in the saddle, that he should be in the saddle with complete power, and that the dealer has very little choice in the matter.

Mr. HUFSTADER. Well, I was dealing in that particular clause that you read, I believe, with the thought that the creation of the franchise itself and the granting of it is the manufacturer's; it is the manufacturer's franchise.

The CHAIRMAN. But you also say that the manufacturer has a right to retain the franchise, to grant it, or to withdraw it.

Mr. HUFSTADER. Well, to withdraw it at the end of its term, Mr. Chairman, and in accordance with the terms of the selling agreement.

The CHAIRMAN. That is what you meant?

Mr. HUFSTADER. Yes, sir.

The CHAIRMAN. That is what you meant then?

Mr. HUFSTADER. That is correct.

The CHAIRMAN. But you did not express it that way at that time.

Mr. HUFSTADER. Yes, sir.

Counsel suggested that at that time there was a 5-year term that had been offered by Mr. Curtice, I believe.

What is the date of that, please?

The CHAIRMAN. I am quoting from Senator O'Mahoney's prepared statement which was given before this committee.

Mr. HUFSTADER. Yes; there was a 5-year term.

The 5-year term had been offered to the dealers by wire from Mr. Curtice at the time of that statement.

The CHAIRMAN. I realize that.

Mr. HUFSTADER. This franchise relationship was evidenced by a written document, but because of the impracticality of having the distributor or dealer place firm orders for definite numbers and models of cars for any substantial period into the future, or of having the manufacturer commit to deliver specified numbers or models of cars over such a period, the document was regarded by both parties as more or less a working arrangement rather than a legally enforceable contract covering the sale-purchase of a definite quantity of goods during a definite period of time.

Until such time as the arrangement was canceled, certain provisions were legally enforceable, but most of the agreements were terminable at will or on short notice.

As time passed and conditions changed, new provisions were incorporated in these agreements. During the 1930's the agreement generally in use in the industry provided for an indefinite term which could be terminated without cause by either party on 90 days' notice, and in some instances by the dealer on 30 days' notice.

In 1930, General Motors introduced the practice of granting an allowance on the excess over 3 percent of new cars of the preceding model year remaining in stock when new models were announced.

In 1934, General Motors Corp. created within its management organization a distribution group to study and review the distribution practices and policies of the corporation and to make recommendations to corporation and divisional managements.

In 1935, it established the General Motors Dealer Council. In 1936, the selling agreement provided for definite obligations on the part of General Motors in the event of termination of the selling agreement under certain conditions.

In 1938 a provision was incorporated in the selling agreement for the return by the dealer of the purchased parts within 30 days.

In the same year the General Motors Dealer Relations Board was established. In 1941, it liberalized the administration of the warranty arrangement by adopting a policy of accepting warranty claims from its dealers on the basis of 12,000 miles or 12 months instead of limiting its obligation to the warranty period of 4,000 miles or 90 days, which was the obligation under the selling agreement and was standard in the industry.

During this period General Motors operated under the indefinite term contract cancelable by the dealer on 30 days' written notice and by the manufacturer on 90 days' written notice without cause. There

were also provisions for immediate cancellation by the manufacturer for cause.

In 1940, complaints had been received that dealers were from time to time canceled just as the selling season was to commence, with the result that the outgoing dealer operated his business at low profit or no profit for a substantial period prior to his termination, and the newly appointed dealer undertook his operation as the representative of the manufacturer at the commencement of the profitable selling season.

To equalize the profit potential between the outgoing dealer and the incoming dealer, General Motors incorporated in its selling agreement a provision to the effect that termination without cause on 3 months' written notice could be accomplished only by giving the notice in the months of April, May, or June, to be effective in the months of July, August, or September.

In the next sentence, Mr. Chairman, I would like to make a correction. The date is wrong. It should be in 1944 instead of 1943 as it reads.

In 1944, General Motors introduced its 1-year-term contract, which provided for termination only for cause, although upon expiration of the term there was no obligation to renew the contract. It is true that a few of the enumerated causes for termination were predicated upon the determination by General Motors on the basis of opinion or satisfaction.

This is the form of agreement which was in effect until recently, with, however, some specific modifications and improvements. Whether these improvements in the selling agreements and policies made over a period of years were adequate under then-existing conditions is perhaps not important now.

However, this record, which sets forth only some of the improvements introduced over this period of time, does establish that General Motors on its own initiative continually sought to improve its relationships with its dealers.

Furthermore, at no time has General Motors voluntarily eliminated or minimized either by contract or policy, any right or privilege enjoyed by the dealer and regarded by the dealer group as beneficial or important to it.

It was only for legal reasons that the corporation, in 1949, eliminated from its selling agreements the so-called territory security provision regarded by many dealers as beneficial and important.

Mr. McCULLOCH. I would like to interrupt there, Mr. Chairman.

Were those legal reasons, reasons put forth by the Department of Justice?

Mr. HUFSTADER. Not expressly; no. They were legal reasons expressed by our legal department.

Mr. McCULLOCH. Well, as a matter of fact did the Department of Justice at about that time—

Mr. HUFSTADER. Yes?

Mr. McCULLOCH. Express the opinion that it might be in violation of antitrust laws if you held to your previous course of action?

Mr. HUFSTADER. Congressman McCulloch, at that time Attorney General McGrath made a speech in which he stated that those provisions would be considered in violation of the Antitrust Act, yes, sir.

Mr. McCULLOCH. And there are a considerable number of dealers who are unhappy by reason of that.

Mr. HUFSTADER. A very considerable, sir.

Mr. McCULLOCH. Is that right?

Mr. HUFSTADER. A very considerable, yes, sir.

Mr. McCULLOCH. And that has, in certain parts of the country, caused conditions which have not been to the best advantage of long-established dealers in particular localities. Isn't that right?

Mr. HUFSTADER. To a certain degree, yes, sir, and it was in that climate that that decision was made, Congressman McCulloch.

Mr. KEATING. But to the great advantage, of new people trying to get into the business as dealers?

Mr. HUFSTADER. I beg your pardon?

Mr. KEATING. Wasn't it to the advantage of new dealers trying to get into the business to have those provisions eliminated?

Mr. HUFSTADER. Not necessarily; no, sir.

Mr. McCULLOCH. It might have been to the advantage of buyers who wanted to get a good deal away from home?

Mr. HUFSTADER. Yes.

Mr. McCULLOCH. Is that right?

Mr. HUFSTADER. But I do not see where it would particularly advantage one who wanted to get into the business.

May I proceed?

A review of the years 1939 through 1941, following a recession in 1938, shows that General Motors dealers and General Motors itself enjoyed increasing prosperity. Many of the conditions complained of in the year 1938, which were at least aggravated by the recession of that year, disappeared partly because of improved business conditions and partly because of improvements in the factory-dealer relationships.

During the period of 1942 through 1946 when the automobile business was confined to service operations, factory-dealer relationships continued to be satisfactory. Then in the years 1947 until the latter part of 1953, the automobile business enjoyed unprecedented prosperity.

In 1946, General Motors recognized that the tremendous pentup demand for automobiles which had accumulated during the war years would create serious problems for the customer, the dealer, and the factory. Customers, depending upon their need and desire for the product, were willing to purchase cars for amounts substantially in excess of prices established in accordance with historically normal pricing procedures. Some customers were seeking preferred delivery of a car whether they were entitled to it or not. This was the situation to be met by the dealer and to be solely within his control within the limit of the cars that he could purchase from the manufacturer.

The latter had the problem of allocating its product to its dealers. In this connection, to insure an equitable distribution and fair share of postwar production to dealers who maintained and operated service facilities during the war years, each General Motors division allotted to each such dealer his share of production for the 2-year period following the resumption of production based on 1941 shipments to him as related to the 1941 production of the division.

With the tremendous demand for new and used motor vehicles and competitive market conditions practically nonexistent for a long period

of time, dealers did not sustain losses on cars taken in trade and, in fact, generally resold them at a profit. Thus, the 24 percent discount from list price granted to dealers represented full gross profit.

Mr. KEATING. Is that a standard—

Mr. HUFSTADER. 24 percent discount? Yes, sir.

Mr. KEATING. In other words, is it publicly and generally known that a dealer gets 24 percent off the list price?

Mr. HUFSTADER. Yes, sir.

Mr. KEATING. And so that is the margin that they use for trading purposes?

Mr. HUFSTADER. That is correct. And that is the gross profit within which they operate their business.

I might add, that isn't the entire gross profit, i. e., the gross profit available both from service, parts, and service labor sales.

Mr. KEATING. And also from selling the used car?

Mr. HUFSTADER. That condition, as I just enunciated, Congressman Keating, was true in the postwar years; it is not true in a normal competitive relation. Generally speaking, there is a loss sustained on the used cars traded in.

Mr. KEATING. Which they absorb in that 24 percent?

Mr. HUFSTADER. That 24 percent is a sort of historical thing that has been carved out of our experience over a long period of years.

Mr. McCULLOCH. How about delivery charges; is that also a possible source of profit?

Mr. HUFSTADER. The preparation of the car for delivery is, Congressman McCulloch.

Mr. McCULLOCH. In some instances it could represent a profit?

Mr. HUFSTADER. The service operation that is involved in preparation for the car; yes, sir.

In this connection it should be noted that at no time has there been any change in the historical pattern of discounts.

It was in this unusual situation, postwar and under the then-existing abnormal conditions, that many of the practices which plague the industry today were generated or developed. Whether the manufacturer, the dealer, the consumer, or all of them are to blame, and if so, to what extent, is not too important at this time. What is important is that these conditions and practices, and their causes, be eliminated.

With this in mind, in December of 1955 General Motors undertook as a prime objective a study of its dealer-factory relationships and the solution of every important problem which this study might reveal, to the extent possible for an automobile manufacturer under existing laws.

One of the principal points made in the hearings before the Subcommittee on Antitrust and Monopoly was that the sale of products was accomplished in many instances as the result of the threat or fear of nonrenewal of the selling agreement which expired annually on October 31. The point was made that even if there were not an expense threat, the fear existed in the mind of the dealer because of the 1-year term of the contract.

Partly because of this, and for other reasons, including the amount of capital investment required today in a dealership operation and the historical fact that the great majority of General Motors dealers continued to operate over periods of many years on the basis of a more or

less automatic renewal of the selling agreements, Mr. Curtice, in December 1955, announced the extension of the term of all then-current dealer selling agreements from 1 year to 5 years. This, in our opinion, eliminated the principal opportunity or reason for any such possible threat or fear of nonrenewal of the selling agreement.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt here.

Do you have compiled, and could you submit to the committee data showing the number of dealers General Motors has, together with the number of years that they have been dealers of General Motors?

Mr. HUFSTADER. Yes, we can, and we will be very happy to submit that data to you.

Mr. McCULLOCH. I think that would be enlightening.

Mr. HUFSTADER. We will be very glad to get that for you.

Immediately thereafter there was initiated a study of the provisions of the General Motors selling agreements and the administration of those agreements, as well as a survey of the administration of the corporation's distribution policies. In this connection, Mr. Curtice and other executives of General Motors Corp. talked to many dealers from all parts of the country who on their own initiative, individually and in groups, visited us and presented their views with respect to the conditions and problems existing in the industry. We also obtained the opinions and viewpoints of dealers at our Motorama shows in New York, Miami, Los Angeles, San Francisco, and Boston.

In addition, Mr. Curtice scheduled a meeting of the General Motors Dealer Council for the second week in February 1956, with a specific request to each member that he come prepared to discuss any problems on his mind or on the minds of dealers in his area, particularly with respect to the selling agreement and dealer-factory relationships.

We had a very constructive council meeting. Every council member expressed not only his own views but also the views of other General Motors dealers in his area. Some had held meetings with groups of dealers; others had visited or canvassed dealers. In one instance, a dealer had sent out a questionnaire to 119 dealers in his area. Another had contacted over 200.

The first day of the council meeting was devoted entirely to the presentation of views by the members of the council and to discussion of those views. Naturally, on some issues opinion was divided. On others there was pretty much complete agreement.

On the second day, the corporation presented the material we had been developing over a period of several weeks, representing proposed revisions and additions to the selling agreement and changes in policy and administrative procedures. There was a thorough discussion, and additional changes and suggestions were adopted to arrive at provisions, policies, and practices that all agreed were reasonable and practical.

No one questioned the good faith or suggested a lack of good faith on the part of the General Motors executive group in connection with the proposed new selling agreement or the proposed policies. Some expressed concern over the possible administration, in the field, of provisions of the contract, but more particularly of the corporation's policies.

They stated that with so many representatives of the manufacturer in the field making decisions, it was reasonable to expect that occa-

sionally because of the human element, there might be errors and mistakes of judgment which might not always be adequately presented from the dealer's viewpoint to General Motors executives for review. They suggested that the membership of the General Motors dealer relations board as then constituted might be changed so that there could be no question as to the impartiality of the decisions of the board. This was one of the principal reasons why Federal Judge William C. Coleman was asked to undertake the assignment—which he has accepted—as an impartial umpire to replace the General Motors dealer relations board.

Mr. McCULLOCH. I would like to interrupt there, Mr. Chairman.

A day or two ago some witness referred to this arrangement which your corporation has, and characterized Judge Coleman, as I recall, as a czar similar to Judge Landis over baseball. Is there anything in the 5-year agreement, specifically is there any understanding between the corporation and the dealers that Judge Coleman's decision is final, and that the dealer is prohibited from going to court if he thinks there is a violation of his contract?

Mr. HUFSTADER. No; there is not.

Mr. McCULLOCH. Do you think, then, that Judge Coleman's powers do not equal the powers of Judge Landis?

Mr. HUFSTADER. There was no such concept in asking Judge Coleman to serve as an impartial umpire, no such concept as that may be inferred. And I think in the latter part of the statement we will cover the aspects that are involved in his appointment.

Mr. MALETZ. Mr. Chairman, Mr. Hufstader, under section 23 (b) (2) of your 5-year agreement, it is provided, and I quote:

If dealer does not conduct its business in accordance with any requirement set forth in sections 11 through 17, inclusive, or section 19 of this agreement, Chevrolet may terminate this agreement by giving to dealer written notice of termination to be effective 3 months after receipt of such notice.

Section 23 (b) (4) provides:

Chevrolet may terminate this agreement immediately by delivering to dealer or its representative written notice of such termination in the event of the happening of any of the following—

which I will not bother to read.

Now let me ask this question: Is it possible for General Motors under this 5-year agreement to terminate this 5-year franchise for any reason not set forth in sections 23 (b) (2) or 23 (b) (4)?

Mr. HUFSTADER. No, it cannot.

Mr. MALETZ. Are these the only reasons for termination by General Motors?

Mr. HUFSTADER. Those are the reasons; yes.

Does that cover the clause on performance?

Mr. POWER. May I interrupt on that?

On the clauses for termination, generally they are all enunciated and set forth in the contracts. However, if you had a fraudulent representation by a dealer before he entered into a contract, we would expect to have the right then as we would under normal contract law. He would have his day in court on that, too.

Mr. MALETZ. Yes, of course.

Mr. POWER. That is the only thing.

Mr. MALETZ. But these are the only reasons set forth in the entire agreement?

Mr. POWER. These are the only reasons. That is correct.

Mr. KEATING. Is the Pontiac selling agreement substantially similar to this Chevrolet agreement?

Mr. HUFSTADER. They are identical, sir. They are all the same, Chevrolet, Buick, Pontiac, Oldsmobile, and Cadillac. The Cadillac is basically a distributor agreement because that is their method of distribution, and then there is a dealer contract under the distributor, which is a relationship between the distributor and the dealer. That is in Cadillac only, however. The General Motors truck agreement is the same.

Furthermore, there was no complaint with respect to the 5-year term of the revised selling agreement or of the possible nonrenewal in appropriate cases at the expiration of the term.

They recognized that the human element was also present on the dealer side of the dealer-factory relationship and that the manufacturer may have occasion to part company at some time with a dealer, as it must on occasion with its employees. A few, however, asked that consideration be given to affording some protection with respect to financial losses on liquidation of their inventories and assets, other than normal and reasonable liquidating losses.

At the second day of the meeting of the council, we presented our proposals for eliminating losses based on actual value at the time of liquidation, and the council acknowledged that such provisions were more favorable than any of the requests presented on the prior day of the meeting.

Mr. KEATING. Mr. Hufstader, that completes your statement about the meeting which Mr. Curtice called in February 1956, and you turn now to a meeting in Los Angeles of General Motors dealers and General Motors sales personnel.

Mr. HUFSTADER. And dealers, Congressman Keating.

Mr. KEATING. And dealers.

Maybe I had better defer this until later.

Mr. HUFSTADER. I would be happy to entertain your question.

Mr. KEATING. All right. You go ahead.

Mr. McCULLOCH. Mr. Chairman, I would like to ask one question concerning the last paragraph.

You have used the phrase "actual value." Was that the price at which those parts and accessories were sold to the dealer, or does that mean the going price in the trade?

Mr. HUFSTADER. No; the dealer's cost, Congressman.

Mr. McCULLOCH. The dealer's cost?

Mr. HUFSTADER. The dealer's cost; yes, sir.

Mr. Curtice spoke to a meeting of General Motors dealers and General Motors sales personnel in Los Angeles, on March 2, 1956. I injected those dates, sir, for clarification.

His talk was transmitted by closed circuit television to similar meetings in 38 cities throughout the country.

I think in expatiating on that, in attempting to answer what may be in your mind, Congressman Keating, that was a meeting of all General Motors dealers and General Motors truck dealers and also all the wholesale personnel who contacted the dealers, so that what Mr. Curtice said to the dealers and to the wholesale organization could be heard by both.

He reported on the results of our study and our conference with the dealer council, pointing out in detail to our dealers and our sales personnel the changes to be incorporated in the revised selling agreement and in our policies. He also expressed his views on the subject of dealer-factory relations. I would now like to discuss this revised selling agreement in detail.

Mr. KEATING. Now at this point let me ask, if I may, Mr. Hufstader, whether the impression which you gained from these meetings was that the dealers were reasonably well satisfied with the new arrangement made by General Motors?

Mr. HUFSTADER. Very definitely, yes, sir; they were.

Mr. KEATING. And I assume you reason from that that there is no need for legislation bearing on that relationship; am I correct?

Mr. HUFSTADER. That is correct.

And we would like to expound that position in further detail as we go along here, Congressman Keating, and I think if you will bear with me, the terms of our selling agreement we feel have covered this whole situation. At least, that is our very definite conclusion.

Mr. KEATING. And the dealers in general are satisfied with that arrangement; is that correct?

Mr. HUFSTADER. That is correct; and they are satisfied with our current selling agreement and its terms and the policies surrounding it.

Mr. KEATING. And they are satisfied today?

Mr. HUFSTADER. Yes, sir; we feel that.

Mr. KEATING. Then would you explain this to me, Mr. Hufstader? I have received telegrams urging this legislation, I would guess, from every General Motors dealer in my area. The New York State Association of Automobile Dealers has also passed unanimously, I believe, a resolution urging the passage of the bill, which this committee has, I think it is fair to say, practically decided, if it does report it, to report it with certain amendments.

Now what is the explanation of that?

Mr. HUFSTADER. Well, sir, in all frankness I don't know that I can explain that.

The CHAIRMAN. In addition to what Mr. Keating says, this committee has received several thousand letters and telegrams from dealers, advocating the passage of either the Senate or House bill.

Mr. HUFSTADER. But, Mr. Chairman, I think frankly, and this is my personal opinion, a great many of those very dealers who are agitating for this legislation have very little basic understanding of what it is about.

There is a great deal of confusion today between the so-called O'Mahoney bill and the Monroney bill.

Mr. KEATING. My telegrams relate to the O'Mahoney bill.

Mr. HUFSTADER. Yes.

Mr. KEATING. We are not considering the Monroney bill. Some of the men who have sent these telegrams and letters I know personally, and they are very intelligent persons indeed.

I think I am correct in saying that I have had no communication from any General Motors dealer in opposition to the legislation.

I have had several telegrams from Ford dealers that followed a meeting—and I draw no unfavorable inferences from this—a meeting which was held in Detroit called by Mr. Ford.

But it seems extraordinary to me that if these dealers were as satisfied as you indicate you felt they were at these big meetings, that they would now almost as a man urge the enactment of legislation to deal with this relationship.

Mr. HUFSTADER. Well, sir, I cannot explain your question. We feel these dealers have very frankly stated to us—Mr. Curtice has had some wires of appreciation of the terms of this selling agreement, which we feel are eminently reasonable and fair.

There was a great deal of criticism that the previous selling agreement was a unilateral agreement. It is a bilateral agreement today.

Furthermore, we go on in this statement to point out that lines of communication with the dealers, as I have stated here, have been established through an executive vice president in charge of dealer relations.

As to why they want this legislation I am unable to answer you and explain.

Mr. KEATING. I must say on the other side some have indicated to me that they have the impression that automobile dealers are the only people in the world that do not have a right today to bring a suit in court.

Someone has made that representation to them, which is as far away from the fact as anything could be.

Of course if they have all based their conclusions upon that far-fetched statement, that might be an explanation.

A good many of them that I know of are well-established concerns which have their own counsel and would not I believe send me a telegram of that kind without analyzing representations made to them to some extent.

Now I realize that there is a certain amount of mass psychology that enters into any such matter, but I would judge from my communications that the General Motors dealers are very dissatisfied with their arrangement today with the General Motors Corp.

The CHAIRMAN. In addition thereto, supplementing what Mr. Keating said, we have statements here on the record from the National Automobile Dealers Association representing 30,000 dealers to the effect that their membership had gone on record as being opposed to certain practices on the part of the manufacturers, and that they are espousing the bills before us as proposed to be amended. I attended a dinner at the Statler Hotel given by the executive committee of National Association of Automobile Dealers and these men, it appeared to me, possessed a high degree of intelligence.

Mr. HUFSTADER. I was at the same dinner, Mr. Chairman.

The CHAIRMAN. They were free agents beyond a doubt.

Mr. KEATING. I was not there, Mr. Chairman.

Mr. HUFSTADER. I am sure you would have contributed to it, Congressman Keating.

The CHAIRMAN. They spoke freely of their espousal of these bills.

Mr. HUFSTADER. That is right.

The CHAIRMAN. Now there appears to be a great inconsistency with what you are saying and what we have learned from these men.

Mr. HUFSTADER. Mr. Chairman, in my judgment as soon as our General Motors dealers thoroughly understand the terms of the selling agreement, which is new—we have not yet finished completely—and

as I show you later in this statement—having all the dealers sign whatever one of the selling agreements they elect to sign. I am satisfied, in my own judgment, they are reasonable men, as Congressman Keating has pointed out, men of free, independent thought, as you have mentioned, and as soon as they are able not only themselves but to take it to their counsel and have it thoroughly analyzed for them by him, I am sure that there will be——

The CHAIRMAN. Admiral Bell is sitting right there, representing the National Automobile Dealers Association. Why don't you discuss it with him now?

Mr. HUFSTADER. We already have.

The CHAIRMAN. Maybe you can straighten this thing out now.

Mr. HUFSTADER. We already have, Mr. Chairman, and Admiral Bell I believe has expressed himself quite favorably as to the things General Motors have done.

He is on record with it.

The CHAIRMAN. Have you persuaded him to withdraw his approval and support of these bills?

Mr. HUFSTADER. No, sir; we have made no such effort.

Mr. McCULLOCH. Mr. Chairman, at the risk of prolonging the opinions and statements that have been made by the committee members, I would like to say this: I think there is a great deal in the point which has been made that when individual dealers thoroughly study these bills that are under consideration, some questions may then arise in their minds.

I don't like to pinpoint people because sometimes pinpointing results in unhappy experiences. But I had the good fortune to serve in a legislative capacity with several automobile dealers who have prospered in this field of activity over a quarter of a century or more. A couple of weeks ago I sent to a couple of them these bills, and asked for their independent analysis. The answers came back to me that they did not think at this time it would serve the best interests of the dealers, in their category at least, to embark on this legislation.

I think that I could recite some facts about the dealers in your organization, because I come from a district in which there are many small towns, in which there are dealers with whom I am well acquainted personally and who have prospered in this field. I am sure that most of us have been around here long enough to know that sometimes trade associations exert very great influences on their members on matters that are up for consideration on the spur of the moment. I am sure that there are members of this committee who have received telegrams simply saying "vote for X bill without amendments."

Mr. KEATING. There is no doubt about it, we all get those telegrams, but they are absolutely meaningless, they don't assist you in your deliberations, at all. They are due to an impression all too prevalent in this country, that Members of Congress just bow to the pressure of anybody that sends them a telegram and do not consider anything on its merits. There is altogether too much of that.

But here is a case where these dealers have a close relationship with the factory, and right on the face of it, it would appear to them as intelligent men that there is a conflict between the interests of a dealer generally and a manufacturer, and that a manufacturer normally, for good cause or bad, would oppose this legislation. I don't say that the cause might not be good. But the dealers should know at once that it is something that General Motors or the Ford Motor Co. do not want. Yet, they send in these telegrams in great volume. And in New York their State association had a meeting in which they discussed practically nothing else.

The CHAIRMAN. Have you got a copy of that resolution? I think it ought to be placed in the record.

Mr. KEATING. I think I have. It was nearly unanimous.

The CHAIRMAN. Admiral Bell, do you have a copy of that resolution of the New York association?

Mr. BELL. I will see if I have it.

Mr. KEATING. And then out of an abundance of caution they added a statement that the Ford dealers present at that meeting met in separate session afterwards to endorse and did endorse the action of the larger body. I suppose that was because they were aware of the fact that there were some Ford dealers who had indicated to members of this committee their opposition to this legislation.

Now, I just can't understand who some of these people didn't speak up at these meetings that you refer to. You are giving us a picture here of everything being sweetness and light and of the dealers approving Mr. Curtice's new arrangement thinking it was going to be wonderful.

I don't believe that very many of them were overawed by the size of the General Motors Co. Maybe they were, and maybe they were afraid to speak out.

The CHAIRMAN. The dealers got this information over a closed television circuit.

Mr. KEATING. Some of them were present in person, as I understand it.

Mr. HUFSTADER. The first meeting that I referred to was a dealer council meeting which was a discussion meeting, which lasted two days. Chairman Celler is correct. The second meeting, the television meeting was, as he has expressed it, a captive audience. There was no interchange. Mr. Curtice enunciated his policies and his approach to the situation. We would be very glad to file with the committee a copy of that talk.

The CHAIRMAN. I can see the psychology that would prevail at such a meeting. The dealers would be rather loathe to speak out in the august presence of Mr. Curtice and the other officials of the General Motors Corp.

They would be afraid of, shall we say, wounding the sensibilities of the General Motors officials, because their business lives depend upon

good relations with General Motors. They might fear that ruffling the feelings of the officials might militate against those good relations. I can see the reason for silence on the part of the dealers there. Only those with extreme bravery would come forward, and speak out. But ordinarily the individual dealer is not likely to speak out.

Mr. HUFSTADER. Mr. Chairman, I can assure you personally—because I took part in these council meetings, took part in quite a good many discussions with dealers—and you have my word, sir, that the discussions were frank, fullsome—I believe there were no holds barred.

You speak of the august presence of Mr. Curtice. He is a very easy man to talk to.

The CHAIRMAN. I don't mean, by using the term, to disparage Mr. Curtice. But he is a man of august presence; a man that controls the destinies of a corporation that has an annual income of \$12 billion is a man of august presence, I assure you.

Mr. HUFSTADER. Yes. But as an individual he is an individual who is enormously interested in having a relationship between General Motors dealers and General Motors that is basically a sound relationship in the interest of the dealers, in the interest of General Motors—it is a partnership relation, and he has so referred to it on a great many occasions.

The whole objective of this new selling agreement is to get that established on the right basis, because in the O'Mahoney hearings, and subsequently, great emphasis was made at that time to the fact that our selling agreement was an unsound document, and should be changed. And we went to work to change it in the interests of its being a bilateral agreement.

The CHAIRMAN. I think a great deal of credit is due your company for recognizing the need for these changes. They are rather belated, perhaps. But these changes have been made by your company. There may be a successor to Mr. Curtice who feels that the changes are wrong. And he may withdraw those improvements. There is nothing to prevent that from being done.

Mr. HUFSTADER. I refer to that point later on in the statement, Mr. Chairman. But at least for 5 years he can't.

Mr. McCULLOCH. I would like to make this observation, Mr. Chairman.

I can well understand why a dealer might not wish to complain when a 5-year contract is offered to him which is cancelable only for cause on the part of the manufacturer, but on the other hand, is cancelable without cause by the dealer on 30 days' notice. It seems to me that that is a most favorable contract. And getting away from this field of endeavor, if I were representing someone who was offered a contract like that, I think ordinarily I would grab it very quickly. I think my client would be well protected if he had the right to cancel the contract on 30 days' notice, and the other man did not have the right to cancel it except for cause, a provision which assures him a day in court for a period of 5 years.

Mr. HUFSTADER. Thank you.

The CHAIRMAN. It is my impression that the dealers are concerned about the possibility of nonrenewal after the 5 years. After they have put in blood, sweat, and tears for 5 years there is still a fear the

contracts may not be renewed. That is one thing they are worried about.

They are also worried about good faith by the manufacturer during that 5-year period in connection with the performance of the contract. That is why they want legislation of this character.

Mr. HUFSTADER. I think that we cover that very point to which you speak, adequately.

Mr. RODINO. Mr. Chairman, I would like to point out that only yesterday I received a telephone call from a dealer in New Jersey who had previously expressed a hope of coming down here and testifying. He then wanted to submit a statement, but apparently changed his mind, because he is concerned as to what repercussions there might be.

This isn't an isolated incident. It has been called to my attention that there were a number of dealers who had expressed the same sentiment. And the New Jersey Automobile Dealers Association has written me, and some of their representatives have discussed this problem with me. They feel that their only hope actually lies with legislation of this sort.

There is a concern on their part about speaking up. Otherwise I would hardly understand how an individual who feels free to express himself could first decide to come before this body, and then subsequently hesitate to do so after thinking it over, saying, "I wonder what might happen; this is my livelihood."

Mr. HUFSTADER. Congressman Rodino, if you could see Mr. Wiles, who is the executive vice president in charge of dealer relations, and the liaison, so to speak, I think you would be reassured as to the willingness of the dealers to speak out and be very frank as to whatever may be on their minds. I don't know how voluminous the mail has been, but I have seen some of it, and some of it has been referred to me for handling. And I go back to underscore my reaction, and in answer to Congressman Keating's question, I feel that as the dealers are able to fairly digest, the General Motors dealers fairly digest this contract, and understand what it is and what it does for them, that it is the soundest relationship that they can have, as Congressman McCulloch has expressed himself.

The CHAIRMAN. I would like to read at this time into the record the resolution adopted by the Ford dealers in New York at the meeting to which reference was made:

Whereas the Ford Motor Co. invited some 125 Ford products dealers to a meeting at Dearborn, Mich., on June 20, 1956, at which time said dealers adopted a resolution against the passage of the O'Mahoney bill; and

Whereas the New York State Automobile Dealers, Inc., have passed a resolution in favor of the passage of the O'Mahoney bill: Now, therefore, be it

Resolved, That the Ford products dealers assembled at Lake Placid, N. Y., on June 30, 1956, support the position of the New York State Automobile Dealers, Inc., in favor of the passage of the O'Mahoney bill: Therefore be it further

Resolved, That copies of this resolution be sent to the Honorable Joseph C. O'Mahoney and the Honorable Emmanuel Celler.

That will go in the record.

Mr. HUFSTADER. May I proceed, sir?

The CHAIRMAN. Go ahead, sir.

Mr. HUFSTADER. Some of the changes and additions to the selling agreement have to do with policy. Others are economic changes, and

still others are general. All are to the benefit of the dealer and, we believe, to the ultimate benefit of the customer. First, I would like to deal with the continuation of the franchise with a member or members of the dealership organization after the principal, or one of the principals, of the dealership for certain reasons is no longer connected with the dealership operations.

(1) Succession of qualified person: Two years ago we made provision in our dealer contract for sons or sons-in-law who are active in the business to succeed a dealer. Now we have made it possible for a dealer to nominate any qualified person active in the business to succeed him.

(2) Continuation of dealership: We have provided that if two people are named in a contract as owners of a dealership and one dies, is incapacitated, is removed, or withdraws, the other may carry on the business provided he was named because of his qualifications as an operator and either has or acquires within a reasonable time a 25 percent financial interest.

(3) Provision for participation by widow: We are providing protection for the widow of a dealer for a period of 5 years. In conjunction with the dealership succession and continuation just mentioned, a dealer may elect that his widow retain a financial interest in the dealership, amounting to not less than 25 percent, provided she is associated with a qualified operator who has an initial investment of at least 25 percent in the business. He will have the right to acquire complete financial ownership at the end of the 5-year period.

Now I wish to outline the provisions for liquidation in the event of termination of the selling agreement under certain conditions.

(4) Orderly liquidation in event of death: In the event of death we have provided that the division, if requested, will defer termination of the selling agreement, for a period of not less than 90 days and not more than 1 year. This will enable the estate to have an orderly liquidation of the business.

(5) Protection of premises in event of termination: Our contract has recognized definite obligations on our part with respect to termination since 1936.

The revised agreement provides that the dealer may make written request for assistance in the event of termination (1) because of incapacity, (2) for failure to have a State license to operate as a new-car dealer, and (3) for cause on 90 days' notice—"cause" meaning failure to fulfill his obligations under the operating requirement provisions of the selling agreement. He has the same privilege if the selling agreement is not renewed upon expiration of its term.

With respect to owned premises, we will help the dealer locate a purchaser or lessee for his premises or we will purchase or lease them at a fair and reasonable value to be determined by independent appraisal.

With respect to premises leased by the dealer, we will assist him in locating a substitute lessee or a sublessee or, failing this and if he does not use the premises, we will reimburse him for the rental for the unexpired term up to a period of 12 months.

(6) Assistance in event of death: In the event of death, if the estate wishes, we will render assistance in locating a purchaser or lessee for the premises owned and used by the dealership.

(7) Repurchase of parts in event of termination or nonrenewal: In the event of termination or nonrenewal we will repurchase all unused parts listed in the current parts price schedule, provided they are in good condition. We will also repurchase any new accessories bought within the preceding 12 months.

(8) Repurchase of tools in event of termination or nonrenewal: We will buy back all special service tools recommended by us for use in the dealership operation and purchased by the dealer within 3 years of termination.

(9) Evaluation of sales performance: One of the most controversial provisions in our former selling agreement provided that the dealer shall properly develop the sale of motor vehicles to the satisfaction of the division. We have eliminated that provision and in its place have spelled out in the contract the basis for evaluating dealer sales performance.

We have provided for a comparison of the competitive performance of the dealer with other dealers, specifically in his zone area but not necessarily to the exclusion of the regional and national areas.

In judging performance we will use the records generally accepted for this purpose. In addition, we will take into account other pertinent factors such as population growth and shifts, the trend of the dealer's sales performance over a reasonable period of time, the availability and delivery of new cars and trucks to the dealer, and especially local conditions directly affecting sales performance.

In a multiple-dealer area, each dealer's share of the total performance responsibility will be determined. In evaluating his performance in relation to his responsibility, consideration will be given to factors already mentioned that are pertinent, as well as to his previous sales experience in the area.

The next series of contract changes and additions deals more directly with the economies of the dealer's business.

Mr. McCULLOCH. Mr. Chairman, I would like to say right there that I think these conditions which you have just read are certainly fair, and I am of the opinion, if they were submitted to a panel of lawyers who were writing contracts for ordinary business people, that there would not be such provisions in many such contracts.

I think General Motors is to be complimented for these provisions covering termination both voluntarily and involuntarily, particularly with respect to death.

Mr. HUFSTADER. Thank you. We tried to be eminently fair in working it out.

(10) Doubling parts obsolescence allowance: We have increased the allowance under the General Motors parts obsolescence plan from 2 to 4 percent of annual purchases. This will give greater assistance to the dealer in maintaining a parts inventory adequate for the increasing complexity of our cars and the steadily mounting number of them on the road.

(11) Allowance for models on hand when new models are announced: In 1930, General Motors pioneered the practice of granting an allowance on the excess over 3 percent of new cars of the preceding model year remaining in stock when new models are announced.

Now the allowance applies to all new passenger cars and Chevrolet trucks on hand when the new models are announced. Furthermore, the allowance has been increased from 4 to 5 percent of list price.

Mr. SCOTT. Four to five percent of list price. Five percent of the excess of new cars in stock?

Mr. HUFSTADER. No, sir.

Mr. SCOTT. That is a price allowance?

Mr. HUFSTADER. That is a price allowance. If the list price is \$2,000 on a car, the allowance has been increased from 4 percent of \$2,000 to 5 percent of \$2,000.

Mr. SCOTT. In other words, the dealer does not return the cars?

Mr. HUFSTADER. No, sir.

Mr. SCOTT. But he receives a trade-in of 5 percent?

Mr. HUFSTADER. Yes, sir; on all of the new unused cars that are in his inventory at the time of the announcement of the new models.

Mr. McCULLOCH. And may he sell that car without violating rules, regulations, or understandings, at a lesser price than the list price that has been given to him?

Mr. HUFSTADER. He can sell it on any basis of price he so elects, Congressman; yes, sir.

Mr. Chairman, I will proceed.

(12) Full cost of warranties: One of the most important economic changes has to do with warranties. In 1941, we took the lead in liberalizing the administration of the warranty arrangement by adopting a policy of accepting warranty claims on the basis of 12,000 miles or 12 months, instead of the standard 4,000 miles or 90 days.

Mr. KEATING. What does that mean, 12,000 miles or 12 months, whichever is greater?

Mr. HUFSTADER. Whichever comes first.

Then in 1953 we liberalized the warranty clause to increase reimbursement on cars sold by the dealer. The revised clause provided for payment by us of 65 percent of flat-rate labor charges and 100 percent of dealer's cost on parts, plus 10 percent.

Now we assume the entire cost of warranty adjustment by increasing the reimbursement on labor from 65 to 100 percent on all our new cars.

Mr. McCULLOCH. I would like to ask this, Mr. Chairman. Would that provision cover the time mentioned by our colleague, Mr. Keating, either for a 12-month period or for 12,000, whichever comes first?

Mr. HUFSTADER. Yes, sir.

Mr. KEATING. Now suppose within the 12-month period a dealer is advised that a car is completely unsatisfactory and the dealer in turn advises a representative of your company; what happens then?

Mr. HUFSTADER. We would appraise that situation, Congressman Keating, on the basis of the individual merits and endeavor to deal with it to the satisfaction of the customer.

We have individual situations arising all the time. In our service department we have service adjusters that are working on that. Our entire endeavor is to keep our customers satisfied, the customers of the dealers who in turn are our customers.

Basically, that is the lifeblood of our business, and as we keep our customers' satisfaction, so do we enhance our business.

Mr. McCULLOCH. What would be your attitude toward a dealer if you did not give the dealer enough leeway and authority to make an adjustment that was satisfactory to the buyer, and the buyer then went over the dealer's head to the home office?

Mr. HUFSTADER. That happens right along, Congressman McCulloch.

Mr. McCULLOCH. Have you visited any reprisals either directly or indirectly?

Mr. HUFSTADER. No, no.

Mr. McCULLOCH. Upon the dealer, when that happens?

Mr. HUFSTADER. No, sir. We appreciate that it is a question of human beings dealing with other human beings, and we are trying frankly in liberalizing this policy from 4,000 miles or 90 days, which is the standard procedure in the industry, to 12,000 miles; we felt that we were going, so to speak, the third mile toward achieving customer satisfaction, and that a good many times these things that are allowed to fester in the minds of an owner are best walked up to immediately.

Mr. KEATING. That is perfectly true.

Mr. HUFSTADER. I would be naive, Congressman Keating, if I endeavored to impress you that we are 100 percent on that, but that is our objective, sir.

(13) Return of purchased parts: The contract has made provision since 1938 for the return of purchased parts within 30 days. We have now increased the period to 90 days.

(14) Increased advertising contribution by factory: Effective **March 1**, we are contributing 50 cents to cooperative advertising funds for each dollar contributed by dealers. Furthermore, the divisions now discuss the spending of the cooperative advertising fund with divisional dealer councils.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question there.

Do you force your dealers to spend advertising dollars if they do not wish to spend them?

Mr. HUFSTADER. No. The cooperative advertising fund is part of the contract, Congressman, but beyond that the expenditure of advertising money is entirely his own determination and discretion and decision.

Mr. McCULLOCH. I don't know whether I understand your answers.

Suppose I were a dealer and I only wanted to spend maybe half the money that would be the average of dealers of my character in the United States.

Would the corporation compel me to bring my advertising expenditure up to an average?

Mr. HUFSTADER. Well, I think I can answer it by explaining first what this cooperative fund is.

For every automobile shipped out of Chevrolet, for example, the dealer is invoiced for a certain amount of money. In the case of Chevrolet it is \$20 per car.

The factory puts \$10 with the 20, making 30, and that is the so-called cooperative advertising fund. You see the ads in the newspapers, on the billboards, and so forth.

Mr. McCULLOCH. Suppose I only wanted to spend \$5 for each Chevrolet, would the \$10 requirement be enforced?

Mr. HUFSTADER. Yes; it would. That is part of the selling agreement, sir.

Mr. McCULLOCH. Do you have many complaints about that requirement?

Mr. HUFSTADER. No. The chief discussion or criticism that is raised by dealers is the question, which is never ending, as to the makeup of advertising and the particular expenditure within his territory. There

is considerable discussion on that which goes on on that score all the time, and the divisions are trying to work with the dealer to have him satisfied on that within the framework of their ability.

Mr. McCULLOCH. Under your old arrangements do you know whether or not your corporation canceled out or refused to renew any franchises by reason of differences over advertising expenditures?

Mr. HUFSTADER. Not to my knowledge, no, sir.

Mr. KEATING. The dealers do not have any voice in selection of these adjectives that you use to describe General Motors' cars, do they?

Mr. HUFSTADER. Yes; I think that they contribute to that. They either like it or dislike it, Congressman Keating. But of course are you speaking now of some of the adjectives—some of the ads you see are paid for by the dealers themselves entirely apart from this cooperative fund.

Mr. KEATING. The particular adjectives in mind are used nationally, and I just wondered what voice if any the dealers had in selecting these adjectives.

Mr. HUFSTADER. Well, if you are speaking about an ad that was used nationally, that is our own, I think.

I now come to the contract changes and revisions which I have classified as general:

(15) Ethical advertising: The revised selling agreement contains a clause providing for maintenance of a high standard of ethics in advertising.

(16) Simplification of language: Another thing we have done is to simplify the language of the contract. It no longer contains such ambiguous and all-inclusive phrases relating to dealer obligations as "to the satisfaction of seller."

(17) Other changes: We have eliminated many clauses which have had only a very limited application over the years and many others whose principal effect appeared to be to cause irritation.

For example, the clause on capital requirements has been revised and made more flexible. Various other changes have been made. All are directed to the benefit of the dealer.

For all practical purposes, the new agreement with all its benefits, went into effect March 1, 1956. The new forms have been in process for several weeks and the recontracting of dealers commenced in June is now about completed.

The forms of agreements have been made available to all dealers, but some, for personal reasons, have not as yet signed and returned them.

Mr. HUFSTADER. At that juncture, if I may, I would like to quote from the Monroney hearings that were held on June 12, page 2612. I would like to interrupt my statement to do that, if I may. I am reading from page 2612, quoting Senator Monroney:

In this thing we tried to stake out on the contract side the flexibility. We merely would like to require, if we could, that these contracts be clear as to the dealers' obligation, so that when he is fired he knows the reasons for it.

Mr. HUFSTADER. And our contracts that you have had the opportunity to study spell that out.

Senator MONRONEY. I haven't seen the new ones yet. I felt that the old one was subject to termination for any reason the factory saw fit. We do not think people, other than sailors, should be terminated for any cause. Dealerships, investments with long-term service should be specifically defined.

Mr. HUFSTADER. I think we may have sent them to counsel.

Mr. BUSBY. Yes; you did.

Senator MONRONEY. I haven't had time to analyze it.

Mr. HUFSTADER. We can recommend them to your highly.

Now, I would like to point out that the printed proof of the contract was sent to the counsel for the Subcommittee on Automotive Marketing Practices at his request, on April 7, 1956. And, if I may, I would like to quote from the letter of transmittal of that contract.

Mr. KEATING. This is a letter to Senator Monroney?

Mr. HUFSTADER. Yes.

It is dated April 7, 1956, addressed to Mr. David Busby.

DEAR MR. BUSBY: In accordance with your request, I am enclosing herewith forms of the following: (1) Dealer selling agreement, consisting of two parts; (2) interim agreement addendum; (3) widow's financial participation addendum; (4) price list. The dealer selling agreement is a printed proof form of the Pontiac dealer selling agreement which will now be printed in final form, in accordance with the proof, subject to any misprints we may find, although we do not anticipate that there have been any errors in this proof. We are certain that there will be not material changes. This form of agreement will be the standard form of agreement for Buick, Chevrolet, and Oldsmobile divisions and their dealers.

Now, on the 16th of May 1956, we sent the printed forms and a complete set of the documents—and I would like to point out that that letter of May 16, 1956, was also addressed to Mr. Busby, and it had nine different documents pertaining to the selling agreement and the necessary forms that go with it. In other words, we supplied counsel on the 16th of May with the complete selling agreement.

And I would like to emphasize that Senator Monroney yesterday talked about the dealer franchises, and stated that the general form of the contract allows either party to cancel on 90 days' notice; that the dealer has no appeal, because he signed away his rights in agreeing that that contract can be canceled on 90 days' notice, and that if he wants to be a dealer he has got to take that contract.

The proposed legislation merely gives the automobile dealer the right to sue for damages actually sustained for bad-faith performance of a one-sided contract.

In view of this statement, and the fact that General Motors has in excess of 20,000 franchises outstanding, it is a fair inference that the Senator has not yet read the new forms of the General Motors selling agreements which were sent to him over 3 months ago.

I would like to point out that he stressed the form of the contract as being the principal evil. And this failure to read the General Motors franchise agreements would appear to be inconsistent with his statement yesterday.

I quote again from page 674 of the record of yesterday:

Indeed, I wonder if any question has in recent years had such full, complete, thorough, painstaking congressional study as has the problem of the relationship between automobile dealers and their manufacturers.

Mr. SCOTT. Perhaps the Senator didn't want to be prejudiced by the acquisition of additional information.

Mr. HUFSTADER. Further deponent sayeth not.

Choice offered on term of agreement: Because of conflicting opinions as to the desirability of a continuing agreement, a short-term agreement or a long-term agreement, we offered this revised selling agreement with a choice as to duration. The dealer could select an agreement which runs for a term of 5 years and is cancellable by him with-

out cause on 30 days' notice but by us only for cause. This formalizes the franchise relationship between us for a fixed long term. It establishes, as legal obligations, policies, and equity considerations which the dealer can enforce regardless of who administers the contract.

If the dealer wished, he could continue as in the past with a yearly contract cancellable by him without cause on 30 days' notice, and by the corporation only for cause. This differs from the first proposal in respect to the term. It is a 1-year agreement compared with a 5-year agreement.

If the dealer desired an agreement of indefinite term, we had it available—a contract cancellable by the dealer without cause on 30 days' notice and by the corporation without cause on 90 days' notice. Except for the duration, this agreement also has all of the terms and conditions of the other two agreements. As to the duration, it is an indefinite agreement, and the duration may be long or short depending upon the exercise of the right to terminate without cause.

As of July 5, with 85 percent of our revised selling agreements executed—some dealers handling more than 1 line of General Motors cars executing 2 or more selling agreements—the choice of the revised forms of selling agreements was as follows:

The indefinite term, 125; the 1-year term, 121; the 5-year term, 20,022; for a total of 20,268.

Mr. SCOTT. Mr. Hufstader, you have an open-door policy here as I see it. The door is open to anybody to come in that meets the condition of responsibility to become a dealer, and it is open to him at any time to go out on very short notice; isn't that correct?

Mr. HUFSTADER. That is correct.

Mr. SCOTT. Nobody has to be a dealer of General Motors cars?

Mr. HUFSTADER. No, sir.

Mr. McCULLOCH. And also, the corporation is bound for a term of 5 years; the dealer is bound for what?

Mr. HUFSTADER. Thirty days.

Mr. McCULLOCH. The evidence of what the dealers and their attorneys think of such a contract appears on this page.

Mr. HUFSTADER. Now, I underscore the point I made earlier, that when they do understand that, I think that there will be a different reaction.

Mr. KEATING. But, Mr. Hufstader, a good many of these dealers, I take it, in entering into the contract, did consult their own attorneys, and that was, I would imagine, the general practice rather than the exception. They would consult their own attorneys before entering into this new contract. Would that not be a fair statement?

Mr. POWER. That is right.

Mr. HUFSTADER. I would think so; yes, sir.

Mr. KEATING. Now, if they consulted their attorneys under those circumstances, would they not perhaps in many instances, consult their attorneys before wiring Members of Congress to support legislation to remedy or to supplement the terms of the contract?

Mr. HUFSTADER. Well, as I stated earlier, Congressman Keating, for me to analyze that sort of thing, I think I would best say to you that our purpose of being here is to set forth to the members of the committee, each one of whom is a competent, capable, and distinguished lawyer, the terms of this selling agreement, for whatever reaction it may generate in the members of the committee.

Mr. SCOTT. Are you through?

Mr. KEATING. Yes.

Mr. SCOTT. I remember a dozen years ago, more or less, when there was agitation around some of the States for legislation to relieve purchasers of the "confession of judgment" clause, and instead of that being handled by legislation, the General Motors Corp. adopted a general policy of eliminating the "confession of judgment" clauses from all its conditional sales contracts and bailment leases.

Mr. POWER. That is correct.

Mr. SCOTT. And I point that out to indicate that frequently industry offers a better solution than legislation that is sometimes proposed, especially when we are so rushed that we sometimes do not read all the testimony or get all the way into the contracts.

Mr. HUFSTADER. That is precisely the way we feel, Congressman Scott, that the steps that have been taken in General Motors in our contractual relationships with our dealers provide no necessity for relief, that it is taken care of, and as we can, by experience, develop those clauses that are necessary for continuation of good relationships, we will.

Mr. SCOTT. Would you care to comment on the statement of one of the witnesses yesterday that you keep several sets of books and that actually the percentage of dealer profit is only, I believe, 1.73 percent average instead of 13.8?

Mr. HUFSTADER. Yes.

Mr. KEATING. One is based on total sales and the other is based on investment. And I would be interested to know how you figure that investment.

Mr. HUFSTADER. May I comment on that a little later? I endeavor to very fully. I have a continuity of thought here, if I may proceed.

Mr. SCOTT. You may, as far as I am concerned.

Mr. HUFSTADER. I would like to take exception and depart from the prepared text and say that I would like to refer to the testimony of Professor Hewitt, which has been made before this committee and read by the chairman at yesterday's hearing.

In support of Professor Hewitt's point that a manufacturer might in the future take away benefits granted to dealers, he stated that in the past General Motors took away from its dealers the continuing form of contract and the automobile scrapping program. The first of these benefits in the form of the continuing agreement is the same that Senator Monroney condemned yesterday as including a 90-day death sentence for the dealer.

We have felt that a definite-term contract was a more favorable form of agreement than the continuing contract. However, because of the conflicting opinions on this point from the congressional hearings that have already been demonstrated and illustrated by Professor Hewitt's point, we offered our dealers the choice that I have just enunciated, and I think that the results speak for themselves.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question.

There is some evidence in the record here, and probably more in the Senate record, that the investigation by the Senate and the hearings in the Senate caused the manufacturers to rewrite their contracts in their enlightened self-interest and that if there were to be no legislation in this field, if the heat goes off the manufacturers so to speak, they might return to the evil practices as of old.

Now, I note you are a vice president of the General Motors Corp. in charge of the distribution staff.

Mr. HUFSTADER. Yes.

Mr. McCULLOCH. In your opinion, is there any likelihood that the General Motors Corp. would go about changing the terms of their contract to the benefit of the corporation if there were no legislation passed by the Congress?

Mr. HUFSTADER. No, sir; Congressman McCulloch. In my judgment, General Motors would not. The reverse would be the case. We would endeavor to develop with our dealers relationships that would make for good, sound relationships entered into and carried on with good faith. The prevailing agreement enables the dealer to have his day in court if he so elects, and certainly we want to have with our dealers an understanding that we need them and they need us, and that it is a partnership relation both for our equities and the equities of the customer.

Mr. McCULLOCH. Then you would be willing to make a statement in your official capacity that if the spotlight were turned off the manufacturers in this field, certainly you, as an official, would not wish to turn the clock back.

Mr. HUFSTADER. I certainly would be very willing and happy to make such a statement.

Mr. McCULLOCH. And you would oppose such a proposal if anyone had the temerity to make it?

Mr. HUFSTADER. I certainly would, and I believe that that expresses the sentiment and the convictions of the executives and officers of General Motors.

Mr. KEATING. You are not able to speak for the Ford Motor Co.? [Laughter.]

Mr. ROGERS. Now, as I understand it, the complaint that has been made by the dealers is not so much what you have in the contract, but the manner and the method in which they are compelled to carry out practices that they do not feel are contemplated by the contract. They request this legislation and claim that unless some remedy is given to them outside of the contract, they are at your mercy.

Now, the question is this: do you feel that with the proposed new contracts that you have outlined, which more than 20,000 dealers have taken for a 5-year period, the so-called abuses that the dealers have complained of in the past will be removed by these contracts and that there will be no attempt on the part of the manufacturers to coerce dealers as it has been alleged, was done in the past?

Mr. HUFSTADER. Congressman Rogers, I can answer categorically yes to your question.

I would like to expand and point out that these provisions of the selling agreement that I have just been going over have been concrete evidence of the effort that we have put into it to eliminate that.

Assume for the moment that the dealer feels that he has been sold too many parts. Assume that some district manager is overzealous. He has the right within 90 days to return any of those parts that he may consider to be excess. I use that as an illustration.

Mr. ROGERS. What about an excess of automobiles? Does this contract permit the dealer to return some of those?

Mr. HUFSTADER. It does not spell out in cars, but we are working with the dealer in the interchange of automobiles all the time.

As a matter of fact, right at the moment some dealers want more and some dealers want to have cars taken back.

They are working with them all the time.

Mr. ROGERS. Has it been a policy that you have worked out with them in the past?

Mr. HUFSTADER. Well, in 1955 we offered to buy back cars for that period.

That was a move, however, in the direction of trying to convince the dealer of our sincerity and earnestness on this bootlegging problem which I would like to address myself to a little bit later.

Mr. MALETZ. Mr. Hufstader, Senator O'Mahoney testified, and I quote from page 33 of the verbatim transcript before this committee as follows:

A Mobile, Ala., dealer charged that he was ordered to construct a body and paint shop and accept cars equipped with accessories which he did not want. Great pressure had been exerted upon dealers to accept automobiles, parts, accessories and supplies which they did not need, did not want or did not feel their market was able to absorb.

My question is this, sir: Is there any guaranty under the present General Motors selling agreement that these practices will not continue?

Mr. HUFSTADER. I think that the selling agreement, Mr. Maletz, speaks for itself and provides the relief to which you have just spoken. That is the point that I was just making in reply to Congressman Rogers' question.

I think that the relief exists there, and that is precisely why we have put it into the selling agreement.

Mr. MALETZ. Well, what specifically in the contract insulates the dealer from possible coercion by the manufacturer in forcing the dealer to buy all his parts, accessories and so on from the manufacturer?

Mr. SCOTT. He can return them within 90 days.

Mr. HUFSTADER. Well, he has 90 days. You are asking, however, that he buys all his parts from us?

Mr. MALETZ. Yes, sir.

Mr. HUFSTADER. It is his right. He can buy them from whoever he wants to.

Mr. MALETZ. What is there in the franchise which prohibits the manufacturer from exercising pressure upon the dealer to require the dealer, for example, to buy all his parts and accessories from General Motors rather than exercise a free choice in the market place?

Mr. HUFSTADER. He has got the right of free choice in the market place.

Counsel suggests that it is a Federal trade order. I answer you, Mr. Maletz, as a salesman, however, we are going to continue to try to sell him goods, because that is the lifeblood of trade.

Mr. MALETZ. Yes, I understand that.

Mr. HUFSTADER. But sell them on a sound basis to him in relation to the demand existent in his territory, but he has a right as a free agent in the market place.

Mr. MALETZ. Yes, of course.

What you are saying is that General Motors intends to use normal sales methods so that General Motors dealers will continue to buy their parts and accessories from General Motors; is that right?

Mr. HUFSTADER. That is right.

Mr. MALETZ. Now what is there in the contract specifically which will prohibit the manufacturer, General Motors here, from exercising coercion upon that dealer to require him to buy his parts and accessories from General Motors?

Mr. HUFSTADER. Well, isn't the answer to your question precisely what you define as coercion?

We get down to a fine point.

Mr. MALETZ. That is one of the objectives that this bill is designed to accomplish.

Mr. POWER. May I interrupt at this point?

Mr. MALETZ. Yes, sir.

Mr. POWER. Wouldn't that be in your opinion illegal?

Mr. MALETZ. Personally I think it would be a violation of the FTC cease and desist order.

Mr. POWER. That is correct.

Do you think we ought to put into our contract that we will not do something illegal?

Mr. MALETZ. Well, now, there is testimony, Mr. Power, testimony before the Senate Judiciary Antitrust Subcommittee about these very practices.

Mr. POWER. That is correct, there was testimony on it. The point I am making is that we tried to put every avenue in there to try to avoid the possibility of coercion in the field.

We are just as much interested in that as the dealer is. We do not want to be sued by the Federal Trade. We have an order against us. That is checked all the time on parts. I don't see what we can do more than we have done.

Mr. MALETZ. First, I take it that your answer is "No" to the question as to whether there is anything in the contract itself which will guarantee the dealer against coercion; is that correct?

Mr. POWER. In those words, there is not anything.

Mr. MALETZ. Secondly, if the dealer presently wants to sue the manufacturer for coercive practices, would he not have to show under the present antitrust laws, that the effect of these coercive practices was to restrain trade unreasonably?

Mr. POWER. That is correct, I think.

Mr. MALETZ. Therefore, wouldn't this bill obviate that degree of proof which is presently required under the antitrust laws?

Mr. POWER. It might.

Mr. MALETZ. So therefore would this bill not be a further guaranty that the dealer would not be subjected to coercive practices by the manufacturer?

Mr. POWER. I think it would. I think also that you must bear this in mind. If you go back and read the transcript of these hearings, you will find that quite a point was made of this 90-day contract, of this 1-year contract of General Motors, and the principal basis of coercion was the threat of nonrenewal, if he would not take parts.

Now as soon as that came into the picture, we know that there were many people that testified in connection with these hearings that did not tell all the story.

We answered some of them. Others we did not even know who or what was being talked about.

There were a lot of cases where the people were not even mentioned.

Now when we saw that happen, we immediately extended the term of the contract to 5 years. That was, according to the testimony at that time, the principal cause of coercion. But we decided to go even further. We extended the 30 days for a return of parts to 90.

We established the channel of communication whereby complaints could be sent right through to an executive vice president and into Mr. Curtice's office.

We set up the impartial umpire. I don't know what further we could do. We will take any suggestions from you.

Mr. MALETZ. One of the suggestions, of course, is this bill. I read the report of the Senate Judiciary Antitrust Subcommittee with a great deal of interest. That report states in part as follows (and I think it bears out what you have said) quoting from page 6:

Quite arbitrary termination and nonrenewal are the chief abuses at which the bill is aimed. Failure of the factory to exercise good faith in conforming or complying with the provisions of the franchise is also actionable by the dealer during the life of the franchise. It is expected that the court will be equally zealous in requiring that the manufacturer, under provisions of the franchise vital to the dealer's livelihood, such as his ability to obtain delivery of the type and volume of cars ordered.

I have no further questions.

Mr. McCULLOCH. I would like to continue this line of thought that you had, Mr. Counsel.

Under this 5-year contract, if I be the dealer and you try to coerce me into taking parts, I don't have to take the parts, do I?

Mr. HUFSTADER. Not at all.

Mr. McCULLOCH. And if you attempt to cancel the contract by reason of the fact that I didn't take the parts, that is my defense in the court of law, isn't it?

Mr. POWER. That is correct.

Mr. McCULLOCH. And if I can sustain my defense, the contract remains in full force and effect throughout the term of its life, and the corporation is obligated to carry out its terms, isn't it?

Mr. POWER. That is right.

Mr. McCULLOCH. So therefore, the contract itself gives me the protection from coercion that I didn't have when there was a franchise which was subject to termination at will, or upon 90 days, or non-renewal at the end of the year; isn't that the answer?

Mr. POWER. That is true.

Mr. SCOTT. I don't see what rights this bill gives you that you don't already have.

Mr. MALETZ. May I ask a question on that point, Mr. Scott?

Isn't it correct, Mr. Power, that under this bill, assuming that a dealer is coerced, that his burden of proof on suing a manufacturer would be considerably less than that required if he were to sue under the antitrust laws?

Mr. POWER. Well, I am not sure on that, on the question of what the final interpretation would be. I would judge from the report, and from the statements made to the effect that it creates new causes of action, gives additional rights that are not in the selling agreement, that apparently the sponsor of the bill so intended.

Mr. MALETZ. Now, as far as giving new rights, you recognize, do you not, that under the old contract which General Motors had with its dealers, a dealer who was coerced by the factory could sue the fac-

tory for violation of the antitrust laws, if he could show that a substantial amount of commerce was restrained; isn't that right?

Mr. POWER. I believe so.

Mr. MALETZ. So therefore, this bill, to the extent that it obviates that degree of proof required of the dealer in such a situation, actually may not create new rights; isn't that right?

Mr. POWER. I don't know; I am only quoting to you what the report says. I am saying that that goes to interpretation. I don't say the courts will accept that, necessarily.

But the expression of the report and the intention of the sponsor will be considered in determining what the legislation does.

Mr. MALETZ. Is it not entirely possible that this bill will be construed so as merely to minimize the degree of proof required by the dealer in suing the manufacturer for alleged coercive practices by eliminating the necessity of his showing the effect of the coercive practice upon competition?

Mr. POWER. That that is all it does?

Mr. MALETZ. The bill, with the amendment, which the committee is now considering.

Mr. POWER. Well, I am not prepared to make that statement, or agree with that statement.

Mr. MALETZ. Have you considered the amendments?

Mr. POWER. Yes, I have.

But I am frank to tell you that there is quite a bit of disagreement and misunderstanding, as you know, yourself, among some people on the reading and the interpretation.

Take, for instance, yesterday, Senator Monroney's interpretation on the right of action or the cause of action that he felt was in the bill for the benefit of the manufacturer, I don't think it is there, and I don't think the committee thought it was there.

Mr. SCOTT. The committee did the best they could to bail the Senator out on that colloquy.

Mr. MALETZ. Mr. Power, one of the amendments the committee is considering, and it is a crucial amendment, of course, is to limit the definition of the term "good faith" as follows:

The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees or agents thereof, to act in a fair, equitable, and nonarbitrary manner toward each other so as to guarantee to one party freedom from coercion, intimidation, or threats of coercion, or intimidation from the other party.

If the "so as" should be construed so as merely to modify "fair and equitable," then would you or would you not say that this bill merely supplements the antitrust laws as a practical matter, by minimizing the dealer's burden of proof?

Mr. POWER. I would say that that might be possible, if you are looking at the administration of the contract, and at the termination of it. If you are talking nonrenewal, I would say definitely that it isn't quite right, in my opinion. I think there is a greater right as a result of this bill on nonrenewal than is afforded under the law today.

Mr. MALETZ. What is that?

Mr. POWER. I think it interferes with the right to contract—in other words, what is the good faith that exists when a contract expires by its terms, and the manufacturer then has 3 applicants for that dealership, including the dealer who has been performing for 5 years?

Now, that dealer who has been performing for 5 years might well be a marginal, or even an inefficient dealer. The two applicants, on the basis of experience you might know of, or maybe the fact that they were located in another city or another town as the manufacturer's dealer, would like to apply for that one, because it is open. In that case, does the manufacturer owe some special consideration or duty there to that dealer who has been a marginal dealer, when the other two men are better qualified to take the franchise?

Mr. MALETZ. Rather than answering that question, may I ask you this further question, Where in the illustration which you have just presented would there be coercion or intimidation?

Mr. POWER. That is not coercion. I am talking about a further right. We were discussing a question of whether or not this bill creates additional legal rights.

Mr. MALETZ. I am asking this: Is it not possible that one construction of this bill, with the amendments which the committee is now considering, is that good faith will be determined in the context of coercion and intimidation?

Mr. POWER. Well, I have accepted pretty generally the position you took, as I said, in relation to termination, and in relation to the administrative provisions of the contract, in the administration of the contract. I am pointing out, however, that when you get into the area of nonrenewal it is quite different.

Mr. MALETZ. In what respect?

Mr. POWER. I am just telling you, I feel we have a right to contract at the end of the term with any dealer or any applicant for that dealership that we want.

Mr. MALETZ. Well, absent coercion, what is there in the bill with the amendments which the committee is now considering, which would prevent General Motors from contracting with any other dealer?

Mr. POWER. Well, the bill says that you must exercise good faith on nonrenewal. Now, I would like to know from you, what is good faith on nonrenewal?

Mr. MALETZ. The term "good faith" is defined, is it not as follows to require the manufacturer—

to act in a fair, equitable and nonarbitrary manner so as to guarantee the dealer freedom from coercion, intimidation, or threats of coercion and intimidation.

Mr. POWER. Then I would like to present this point. You have given me the language of the bill. I want to see what the application of that language is to these situations. Let us assume a dealer who has performed all the terms and conditions of his contract quite well—he has lived up to his agreement, he has done a good job as a dealer within confines of the agreement—but the man, because of personal misconduct on his part, we don't consider him very desirable—or let us say that he is a man that just doesn't agree with the policies of the corporation. Now, it is just the same as an employee after a while if you are not getting along it is better for him to leave and it is better for us to let him go, and give him the thing that he is entitled to—the separation allowance, if that is in the picture.

Now, we do the same thing here, under our contract, on nonrenewal. We are not happy with this man, he is not happy with us, so the best thing, after 5 years—and you have given it a pretty good twirl for 5 years—so you want to part company. Now, has that man got some

special right under this legislation that he doesn't have without the legislation?

Mr. ROGERS. Along that line, I am sure that you are familiar with the statute that was passed out in the State of Colorado, which, in effect, stated you could not cancel a franchise without having a court determine whether or not you had acted in good faith in the cancellation.

The question exists as to what is good faith in that situation. In the Colorado statute, the responsibility was passed to the court. Now, the question that I want to ask is this: Do you feel that the court should be the proper one to make the determination as to whether you have been fair and equitable and not arbitrary in the matter?

Mr. POWER. Well, I think in answering that, if it is the law of the country that we should go in and have the courts determine it, we will abide by it. But we question, and there is pending a suit by us questioning, the constitutionality of that law on that point.

Mr. ROGERS. Well, that gets—

Mr. POWER. I mean, that is a matter of just trying to find out. We want to know ourselves whether that is constitutional.

Mr. ROGERS. Yes.

There is being asked of the Congress of the United States at the present time, because of the great public interest in the conduct of the manufacturer in his relation with his dealers, that there be some person to determine the very answers to the question you raise about good faith. In effect we are saying in the proposed amendment here: "If you don't deal with him in good faith, we will give him a cause of action against you."

Now, the question that I want to raise is whether or not in your opinion you feel that here is an area which by the nature of the automobile business, is so unusual that either the States or the Federal Government should come in and act more or less as an umpire. In this instance the umpire would be a judge.

Or, is there any other way by which this problem might be met?

Do you feel that using an umpire answers the question? What might be the answer to determine whether or not you have been fair, when you think you have been fair and the dealer says you have not?

Mr. POWER. I would like to answer that this way:

As far as I personally am concerned—and I am talking my own personal opinion—

Mr. ROGERS. Surely.

Mr. POWER. And from what I know about nonrenewals and cancellations—and I know quite a bit about them in General Motors, because no selling agreement is ever terminated or nonrenewed without being reviewed by the legal department of General Motors Corp.—it passes through first from the zone; the recommendation goes from the zone to the central office and then the divisional executive group pass on it, and then it goes to the legal staff—we make a review of it—we have not had any great problems in the past, and it may be argued that there were problems, there were questions, and the like.

But I have personal knowledge of the situation that existed.

I, for myself, would not be at all disturbed that this legislation would affect our administration of the contracts in the way we do them. I think that good faith is adequately provided for with our impartial umpire and with the way we operate.

But I do take this position, that if there is here an infringement—if there is—on the right to contract, then I think it is quite dangerous, because it can extend and be broadened into other areas.

Now, that is the only reason that I raise this issue, and I say that on the constitutional point in Colorado, that is one of the reasons we are questioning it. We want to know. Now, if that is legally constitutional, we certainly are going to abide by it, and I want to add that I do not think it is going to hurt us too much. I don't think it will change our administration as we propose to handle it.

Mr. ROGERS. Up until the time that these new contracts were offered, there was never any question, I think, from the lawyers' standpoint that you had a contract with a dealer and the dealer had to live up to it and you had to live up to it. Under contract law, if the contract ended under its terms, that was the end of it.

But the major complaint that has been stated to me and to others is not so much about what is in the contract. It is that those who may be parties to it feel that if they do not go ahead and carry out practices suggested outside of the contract, they would suffer penalties. So, they go ahead and comply.

Now, they say that that condition is such that we should do something about it. Do you feel that by the new contract and the new arbitrator that you refer these things to, that that removes the problem they have complained of in the past?

Mr. POWER. I do, and I would like to revert back to one illustration. I am not sure that you were present when this particular provision was mentioned. That is the provision which said that the dealer had to maintain a sales performance satisfactory to the seller.

Now, that particular provision was mentioned specifically in the O'Mahoney hearings. In the dealer council meeting the members brought that point out. They said, "We don't know what the standard is," and the zone manager can say, "That is my personal satisfaction."

We wrote then very carefully this clause, which is the standard in itself. It spells it out. There is no question of personal satisfaction or anything else. There is a standard there for determining it.

When we brought that into the council meeting the following day, one of the men who was a leader, I would say, in raising this point, said that he could not write it better if he was asked to do it himself; he did not think he could do it as well.

Now, I am only saying that we have tried, and we are putting before this committee today everything we have done. We are not trying to ask you to accept our word on these things. We are saying, "Here they are. We would like you to look at them and see if you think we have done the job we think we have."

Mr. HUFSTADER. May I proceed?

Mr. ROGERS. Go ahead.

Mr. HUFSTADER. I was—

Mr. McCULLOCH. I would like to interrupt you once more, because I was concerned about this point, and I direct it to Mr. Power.

Is it possible that the bills before us take us into a new field that is entirely strange to our system of jurisprudence or our practice with respect to the enforced extension or renewals of franchises?

Mr. POWER. That to me is perhaps the most vulnerable section of the bill as I see it, as I understand it.

Mr. McCULLOCH. And that is embarking into an entirely new field, is it not?

Mr. POWER. I believe so.

Mr. McCULLOCH. Is the policy that is involved in this particular field any different from the enforced extension of a lease for a factory building or an office building or a beauty parlor or what have you?

Mr. POWER. Not in my opinion.

Mr. McCULLOCH. So therefore if this legislation is logical and is necessary and is proper in this field, it would be just as logical and necessary and proper in a field where a landlord was accused of operating in an unfair manner or in a manner which we have said is not in accordance with proper concepts?

Mr. POWER. That is what I meant when I said if the nonrenewal feature of the bill infringes on the freedom of contract in any way, it can be eventually broadened and extended. I meant into other fields.

Mr. ROGERS. Proceed.

Mr. HUFSTADER. I was speaking to the testimony of Professor Hewitt and there is one more aspect of that testimony I would like to refer to.

He said that the so-called scrappage plan had been withdrawn from General Motor's dealers. I would like to point out to the committee that as we refer to that, we called the plan a junker plan. It was originally established by Chevrolet in 1927. It was extended to the four other car divisions of General Motors in January, January 1, 1930.

It remained in effect until the latter part of 1933 when the NRA automobile dealers code was established, and the junker fund was discontinued at that time as being out of order with that code.

At the end of 1933, all balances that were accruing to dealers' credit were returned to those dealers.

I merely mention that as being in rebuttal of Professor Hewitt's point that things had been taken away by us.

Continuing the statement: Under any of our contracts, as selected by the dealer, which in most instances is a 5-year term, the dealer has his day in court. I am sure that every dealer understands that. No complaint has been registered to our knowledge by any dealer that the revised selling agreement is not a binding legal contract with respect to which he has no redress in the courts if terminated during its term by General Motors other than for valid cause.

If grounds for such a complaint existed, I am sure that dealers would have registered such a complaint, either with us or with their dealer associations or Members of Congress, since they were afforded ample opportunity to review the revised forms of selling agreements with their attorneys.

So that there may be no question on this point in the minds of any of the members of this committee, I would like to file—as has been done—the dealers' selling agreement and refer you to the section of the terms and conditions entitled "Operating Requirements," paragraphs 11 through 22, and also to paragraph 23 of the terms and conditions entitled "Termination."

(The document referred to is as follows :)

Form No. GSD-T201-A-Chevrolet-56
U. S. A. 3-56

**CHEVROLET MOTOR DIVISION
GENERAL MOTORS CORPORATION
DEALER SELLING AGREEMENT**

THIS AGREEMENT, effective this _____ day of _____, A. D. 19____, by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Chevrolet, and _____
an { individual
or { copartnership of _____
a { corporation _____ City _____ County _____ State
hereinafter called Dealer,

GENERAL PURPOSE OF THIS AGREEMENT

The purpose of this Selling Agreement is to set forth the functions and responsibilities of the parties in the sale by Chevrolet to Dealer of the Motor vehicles, chassis, parts and accessories covered by this Agreement and the resale of those products by Dealer to its customers.

Both Chevrolet and Dealer recognize that in the manufacture, sale and service of motor vehicles the public is provided with a highly mechanized product of substantial value, the purchase of which is of major economic significance, and the usage of which has become to many a virtual necessity; and that the efficient and safe operation of motor vehicles is dependent upon the maintenance of the highest standards of production by the manufacturer and the highest standards of sales and service performance by the Dealer.

Chevrolet recognizes, therefore, that a sound dealer organization is essential to the public interest as well as to its own success, and desires a stable and prosperous dealer organization.

Chevrolet has elected to enter into this Selling Agreement with Dealer because of its confidence in Dealer's integrity and business ability. It expects of Dealer, and Dealer acknowledges, that Dealer will actively, aggressively, and honestly promote the sale of the motor vehicles, chassis, parts, and accessories covered by this Agreement to customers in its trade territory and give to the public prompt, efficient and courteous service; and that Dealer will conduct its business in a manner that will reflect favorably upon the Dealer and its operations, Chevrolet and Chevrolet products and will preserve the good will of the Dealer and its operations and the manufacturer, as well as the product good will that has been created by the production of motor vehicles, parts and accessories of the highest quality and design.

Dealer has elected to enter into this Selling Agreement with Chevrolet because of its knowledge of the Chevrolet reputation for integrity and fair business practices and of the customer acceptance for Chevrolet products. Dealer expects of Chevrolet, and Chevrolet acknowledges, that Chevrolet will produce and provide, at fair and competitive prices, motor vehicles, parts and accessories that are saleable in Dealer's territory and of a quality and design that under normal conditions and when properly adjusted and maintained, will give good performance for their owners; that, insofar as possible, Chevrolet will make such products available in quantities to meet Dealer's reasonable requirements in Dealer's trade area; that Chevrolet will assist in creating a demand for such products by advertising in various advertising media; and that Chevrolet will assist Dealer in the sale of such products by making available to Dealer, sales assistance and advice, advertising materials and campaigns, and instructions in sales and business methods.

In consideration of the foregoing and of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Subject to the terms and conditions hereof, Chevrolet will sell and Dealer will buy Chevrolet motor vehicles and chassis with Dealer having the obligation to develop properly the sale thereof at retail particularly in the following area:

Second: The terms and conditions set forth in the attached "Terms and Conditions—Dealer," bearing Form No. GSD-T202—Chevrolet-56 are hereby made a part of this Agreement with the same force and effect as if set forth at length herein.

Third: This is a personal contract, being entered into in reliance upon and in consideration of the personal qualifications of and representations with respect thereto of the following named persons, who actively and substantially participate in the ownership or in the operations, or both in the ownership and in the operations of the Dealer:

PARTICIPATION IN DEALERSHIP		Ownership	Operation
Name: _____		<input type="checkbox"/>	<input type="checkbox"/>
_____		<input type="checkbox"/>	<input type="checkbox"/>
_____		<input type="checkbox"/>	<input type="checkbox"/>

The individual or individuals designated shall be responsible for any act or omission of any of Dealer's agents or employees which may be contrary to the purposes and objectives of this Agreement or the obligations of Dealer hereunder. Dealer shall not transfer or assign nor attempt to transfer this Agreement or any right or obligation hereunder. Dealer shall not make nor suffer to be made any change in the ownership, financial interests or active management of Dealer without the prior written approval of Chevrolet.

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties for a term commencing on the stated date of execution hereof and expiring _____. At the end of the stipulated term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided in Section 23.

Fifth: This Agreement is not valid until and unless it bears the facsimile signature of the General Sales Manager and is countersigned by an Assistant General Sales Manager, a Regional Manager, an Assistant Regional Manager or Zone Manager of the Chevrolet Motor Division—General Motors Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORPORATION
W. E. FISH, General Sales Manager

Dealer _____

Firm Name

By _____

Officer of Firm and Title

By _____

Officer of Firm and Title

By _____

Zone Manager

Town and State _____

Witness: _____

(If executed by a representative of Dealer, title such as President, Partner, etc., must be indicated.)

If Dealer is a corporation, show State in which incorporated: _____

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

TERMS AND CONDITIONS—DEALER

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. Dealer's selling privilege

Dealer is granted the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis and the non-exclusive privilege of using the word "Chevrolet" and the Chevrolet trademark or trademarks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. *Handling of Dealer's orders*

A. Three months' estimate of requirements.—To enable Chevrolet to establish production schedules, and to place orders with its suppliers on the basis of the lead time normally required in the automobile mass production industry, and to have such schedules reflect the best combined estimate of Chevrolet and its dealers of Chevrolet motor vehicle and chassis requirements for future retail deliveries, Dealer will, unless otherwise advised by Chevrolet, furnish Chevrolet every month, on forms provided by Chevrolet, an estimate of Dealer's requirements of new Chevrolet motor vehicles and chassis for the next three (3) calendar months, each month's estimate to be shown separately.

B. Ten-day report.—To assist Chevrolet in the evaluation of current market trends and in the adjustment of established future production schedules, as well as current production schedules to the extent possible, Dealer will furnish Chevrolet every ten (10) days, with a report known as the "Ten-Day Report" on forms supplied by Chevrolet. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

C. Orders.—Dealer shall submit orders for Chevrolet motor vehicles and chassis to Chevrolet for acceptance at mutually satisfactory periods. Such orders shall be submitted upon order forms supplied by Chevrolet. Accepted orders for any standard products not shipped during the month for which delivery was scheduled will remain in effect unless canceled in whole or in part by either party upon written notice to the other. However, orders for "special" motor vehicles and chassis, accepted by Chevrolet for the convenience of Dealer, may be canceled only by Chevrolet.

Any motor vehicle or chassis which differs from Chevrolet's standard specifications and/or incorporates special equipment, and which because of such difference in specifications or increase in price has only a limited use or marketability, shall be considered "special".

D. Failure to fill orders.—Chevrolet shall not be liable for failure or delay in filling orders of Dealer, which have been accepted by Chevrolet, where such failure or delay is due, in whole or in part, to any labor, material, transportation, or utility shortage or curtailment, or to any labor trouble in the plants of Chevrolet or its suppliers, or to any cause beyond the control or without the fault or negligence of Chevrolet. Dealer shall not be liable for any failure to accept shipments of products ordered from Chevrolet, where such failure is due to any labor trouble in Dealer's establishment or any cause beyond the control or without the fault or negligence of Dealer.

3. *Payment by Dealer*

Dealer shall pay Chevrolet for each shipment of new Chevrolet motor vehicles and chassis, Dealer's price established by Chevrolet and in effect at the time of such shipment, together with a factory handling charge determined by Chevrolet, which shall include reimbursement to Chevrolet for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: Cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. *Car shipments*

A. Mode of shipment.—To integrate the shipment of assembled vehicles from plant sites with continuing plant production, to minimize required shipping facilities and areas, and to facilitate and expedite loading and transportation of vehicles by carriers, Chevrolet will select the distribution point and the mode of transportation, but Chevrolet will endeavor, whenever practicable, to follow Dealer's requests with respect to routing and mode of transportation. Chevrolet will prepay all charges, including transportation charges, for the delivery of motor vehicles and chassis made to Dealer hereunder.

B. Delivery charges.—In addition to the prices and charges otherwise provided for herein, Dealer will pay Chevrolet the destination charges established by Chevrolet and in effect at the time of shipment for motor vehicles and chassis delivered to Dealer hereunder. Chevrolet has the right at any time to change destination charges, to issue new applicable bulletins, and, if necessary, new applicable Price Lists.

C. Liability for demurrage.—Dealer shall be responsible for and shall pay any and all charges for demurrage, storage, or other charges accruing after arrival of such shipment at destination.

D. Diversion.—If diversions are made upon Dealer's request or as a result of Dealer's failure or refusal to accept motor vehicles or chassis that may be shipped Dealer on Dealer's orders, unless such failure or refusal is excusable under the provisions of Section 2D hereof, Dealer will assume responsibility for and pay the additional charges and expenses incident to such diversion.

E. Claims.—All claims for loss of or damage to shipments of motor vehicles and chassis shipped hereunder while in the possession of the transportation agency shall be submitted to Chevrolet by Dealer within twenty (20) days after date of delivery of shipment to Dealer.

5. *Change in pricing*

A. Right to change prices.—Chevrolet has the right at any time to change prices, discounts, terms and provisions affecting any current models or body types of motor vehicles or chassis, and to issue new applicable Price List or bulletins.

If Chevrolet changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Chevrolet at the time that the same are made effective by Chevrolet.

B. Price increases.—Except with respect to the pricing of new yearly models or body types at the introduction thereof, Chevrolet shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any current motor vehicles or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel or modify orders for motor vehicles or chassis to which any such change applies, provided written notice of cancellation is delivered to Chevrolet within ten (10) days after receipt by Dealer of Chevrolet's notice. All unshipped orders not cancelled as provided herein shall remain in effect for delivery in accordance with said change.

C. Price reductions.—If Chevrolet reduces the list price on any of its current models or body types of motor vehicles or chassis, Chevrolet will refund or credit as an allowance to Dealer on all new and unused motor vehicles and chassis of current model and body type, purchased from Chevrolet or purchased from another authorized Chevrolet dealer during the twelve (12) months immediately preceding the date of such reduction and carried in Dealer's stock as new and unsold at the time such reduction is made, an amount equal to the difference between the price Dealer shall have paid Chevrolet, or would have paid Chevrolet if such units had been purchased from Chevrolet, for any such motor vehicles or chassis and the reduced amount then payable for the same; provided, however, that no refund will be made upon any motor vehicle or chassis used by Dealer for demonstration purposes, nor will any such refund be granted unless written claim therefor, properly documented with supporting data, be made by Dealer in writing within thirty (30) days from the date that such reduction becomes effective. In the case of motor vehicles or chassis purchased by Dealer under a title retaining instrument Chevrolet reserves the right to pay such difference in price to the holder of the instrument for account of Dealer.

6. *Model change*

In the event that Chevrolet shall, at any time, discontinue current models and body types of Chevrolet motor vehicles or chassis, and substitute in place thereof new models and body types, Chevrolet will make an allowance to Dealer on the total number of new unused motor vehicles and chassis of such discontinued models or body types purchased from Chevrolet, or from another authorized Chevrolet dealer, prior to such model change and still in Dealer's stock unsold on the date hereinafter specified.

The amount of such allowance and the time of payment shall be determined by Chevrolet. Such allowance, however, shall in no case be less than five per cent (5%) of the list price of Chevrolet motor vehicles and chassis of such models and body types about to be discontinued.

The allowance will not be made on any motor vehicles or chassis used by Dealer for demonstration purposes.

The date on which Dealer's stock of discontinued models shall be determined shall be either the Announcement Day designated by Chevrolet on which the new models and body types are officially announced to the general public (local preview announcements excepted), or a date prior thereto designated by Chevrolet.

All claims for the allowance must be made in writing within thirty (30) days from the Announcement Day or the prior date designated by Chevrolet, as the case may be, and must be properly documented with supporting data. If Chev-

rolet elects to designate a date prior to Announcement Day, Chevrolet will make the same allowance with respect to purchases by Dealer from Chevrolet of corresponding Chevrolet motor vehicles and chassis of those models and body types about to be discontinued made between said designated date and Announcement Day.

7. Model change at reduced list price

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Chevrolet will refund or credit to Dealer a proportionate amount on the price paid to Chevrolet by Dealer, or the price Dealer would have paid to Chevrolet if such units had been purchased from Chevrolet, for those new unused motor vehicles and chassis of the discontinued series purchased from Chevrolet or purchased from another authorized Chevrolet dealer which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refund will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different series or line of motor vehicles. In the latter event Chevrolet will make such refund or allowance as shall, in its opinion, seem equitable under the circumstances.

Dealer will be entitled to receive the refund allowable under this Section in addition to such allowance as Dealer may be entitled to under Section 6.

8. Change of design

Chevrolet may change the design of any new Chevrolet motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any Chevrolet motor vehicle, chassis, accessories or parts thereof, previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Such changes shall not be considered Model Changes as contemplated by Section 6 hereof.

9. Warranty

There are no warranties, expressed or implied, made by Chevrolet to Dealer on the Chevrolet motor vehicles, chassis or parts furnished hereunder except to the extent comprehended in the following:

"The Manufacturer warrants each new motor vehicle, including all equipment or accessories (except tires) supplied by the Manufacturer, chassis or part manufactured by it to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof which shall, within ninety (90) days after delivery of such vehicle to the original purchaser or before such vehicle has been driven 4,000 miles, whichever event shall first occur, be returned to it with transportation charges prepaid and which its examination shall disclose to its satisfaction to have been thus defective: this warranty being expressly in lieu of all other warranties, expressed or implied, and all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any other liability in connection with the sale of its vehicles.

"This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized Chevrolet Service Station in any way so as in the judgment of the Manufacturer to affect its stability and reliability, nor which has been subject to misuse, negligence or accident."

10. Parts and accessories

A. Selling rights.—Chevrolet hereby grants to Dealer the non-exclusive right to sell new Chevrolet parts and accessories and Chevrolet will sell Dealer direct or through a designated parts warehouse, such new Chevrolet repair parts and accessories.

"Chevrolet parts and accessories" as used in this Agreement are defined as being parts and accessories manufactured by or for Chevrolet, designed for use on Chevrolet motor vehicles or chassis, and distributed by Chevrolet or any division or subsidiary of General Motors Corporation.

B. Prices.—Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions established by Chevrolet and in effect at the time of shipment.

C. Billing and payment.—The parts and accessories account of Dealer is due and payable, as per statement rendered, on or before the date specified by Chevrolet. If Chevrolet for reasons of credit deems it necessary to place shipments on a C.O.D. basis, collection charges, if any, are to be paid by Dealer.

D. Return of defective parts and accessories.—After notifying Chevrolet and receiving specific shipping instructions therefor from Chevrolet, Dealer may return for credit defective Chevrolet parts and accessories purchased direct from Chevrolet or acquired as the result of performing warranty adjustments in accordance with the provisions of subsection 19F hereof, at the then current dealer net price of such parts or accessories plus ten percent (10%); such parts and accessories to be packaged or crated and shipped, transportation charges prepaid. Dealer will be reimbursed for transportation charges prepaid by Dealer on authorized shipments of defective parts and accessories.

E. Return of inactive parts.—In the event Dealer develops an inactive stock of Chevrolet parts, or for any other reason desires to liquidate a portion of its parts stock, Dealer may submit to Chevrolet a list of those parts purchased direct from Chevrolet, in good condition and unused, which Dealer desires to return for credit. Chevrolet shall promptly review said list and notify Dealer as to which parts will be accepted, the prices therefor and the proper shipping instructions. Thereupon Dealer may package or crate and ship such parts, transportation charges prepaid, in accordance with Chevrolet's instructions.

F. Right to return parts within ninety days—Accessories within thirty days.—Dealer may return any new Chevrolet parts purchased direct from Chevrolet, which are in good condition and unused, for credit within ninety (90) days after receipt thereof by Dealer. Dealer may also return any new Chevrolet accessories, anti-freeze and other service supplies purchased direct from Chevrolet, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer; provided further, however, that if Dealer shall have purchased accessories direct from Chevrolet for use in connection with specific motor vehicles for which orders have been placed with and accepted by Chevrolet and such motor vehicles are not shipped to Dealer prior to the introduction of new motor vehicle models, thereby cancelling such orders, then to the extent such accessories are not useable on the new models and are in excess of Dealer's requirements they may also be returned to Chevrolet for credit. Such parts, accessories and service supplies shall be packaged or crated and shipped to the destination specified by Chevrolet, transportation charges prepaid. Credit on new Chevrolet parts and accessories will be at Dealer's net cost. Dealer shall be entitled to return accessories whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Chevrolet upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. Dealer's place of business

In order to provide product representation commensurate with the good will attached to the name "Chevrolet" and to facilitate the proper sale and servicing of Chevrolet motor vehicles, chassis, parts and accessories, Dealer will maintain a place of business satisfactory as to appearance and location, and adequate in size and layout for new car sales operations, service operations, parts and accessories sales and used car sales, and will maintain the business hours customary in the trade.

Once Dealer is established in facilities and at a location mutually satisfactory to Dealer and Chevrolet, Dealer will not move to or establish a new or different location, branch sales office, branch service station, or place of business including any used car lot or location without the prior written approval of Chevrolet.

12. Capital requirements

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others, and since Chevrolet has set standards for the capital and net worth of all its dealers based on Chevrolet's past experience, Dealer, at the time of execution of this Agreement, shall establish its owned net working capital and net worth in the respective amount and form specified by Chevrolet. If, subsequently due to changed conditions, the amount of owned net working capital or net worth should be materially increased or decreased, or if the way in which either is set up should be changed in any respect for the proper handling of Dealer's business, Dealer and Chevrolet will negotiate to

establish a revised amount and structure of working capital or net worth to meet such changed conditions, and Dealer will meet such revised capital requirements within the time agreed upon.

13. Accounts and records

A. Uniform accounting system.—It is to the mutual interests of Chevrolet and Dealer that uniform accounting systems and practices be maintained by dealers in order that Chevrolet may develop standards of operating performance which will enable dealers to obtain the most satisfactory results from the sales potentials assigned to them, and which will enable Chevrolet to prepare composite dealer profit statements periodically to guide Chevrolet in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date a satisfactory uniform accounting system of a type designated by Chevrolet and will furnish to Chevrolet by the tenth of each month a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said statements in accordance with the Accounting Manual prescribed by Chevrolet.

B. Examination of accounts and records.—In order to assure the maintenance of an accounting system of a type designated by Chevrolet, Dealer will permit an examination of its accounts and records to be made by a person or persons, either in the employ of Chevrolet or acceptable to Chevrolet. A copy of the report of such examination will be furnished to both Chevrolet and Dealer.

14. Sale of Motor Vehicles

Dealer shall provide satisfactory sales performance and render satisfactory service to owners in the area described in Paragraph First. Evaluation of Dealer's sales performance shall be based on the relationship of Dealer's sales of new Chevrolet passenger cars and trucks in such area, to the sales of other makes of passenger cars and trucks directly competitive therewith both in price and in product in such area, as compared to a similar relationship of the sales of new Chevrolet passenger cars and trucks to other makes of passenger cars and trucks directly competitive therewith specifically in the Chevrolet Zone area wherein Dealer is located, but not necessarily to the exclusion of the Chevrolet Regional area or the National area. Such evaluation shall be based on records generally accepted for such purposes by the automobile industry and shall also take into account other pertinent factors, such as the trend of Dealer's sales performance over a reasonable period of time, the availability and the delivery of Chevrolet passenger cars and trucks to Dealer, and local conditions directly affecting such sales performance.

Where one or more other Chevrolet dealers are located within the area described in Paragraph First, the evaluation of the combined sales performance of all Chevrolet dealers in such area shall be made as provided above, and Dealer shall contribute its fair share to the sales performance rating for the area. In evaluating Dealer's contribution to the sales performance rating for such area consideration shall be given to such factors as Dealer's sales performance over a reasonable period of time, the availability and delivery of Chevrolet passenger cars and trucks to Dealer, the geographic location of Dealer's place of business and the general shipping habits of the buying public within such area, Dealer's sales participation experience within such area, and Dealer's standard of sales participation within such area (if any) previously determined and accepted by Dealer and Chevrolet.

15. Sales Staff

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the area described in Paragraph First.

16. Sales and Service Records

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Chevrolet at all reasonable times in business hours to inspect such records.

17. Customer Complaints

Dealer will receive, investigate and handle all complaints received from customers or prospective customers with a view to securing and maintaining the good will of the public toward Dealer, Chevrolet and Chevrolet products.

18. *Treatment of Purchasers*

A. Informing purchasers as to details of their purchases.—Dealer will inform retail purchasers of Dealer's delivered prices and will give them itemized invoices covering the details of their purchases.

B. Representations as to contents of charges.—Dealer will not make any misleading statements or misrepresentations as to the items making up its total selling price, or as to the prices related to such items, nor make any statements intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents destination charges and factory handling charges than the amounts of such items actually charged to and paid for by Dealer.

C. Right of retail purchaser to buy a new car without purchasing optional equipment or accessories.—Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment or accessories and Dealer, therefore, will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet motor vehicle without such optional equipment or accessories.

D. Advertising.—Both Chevrolet and Dealer recognize the need of maintaining the highest standards of ethical advertising at all times in order to secure and maintain public confidence in Dealer, Chevrolet and Chevrolet products.

Accordingly, Chevrolet will not publish, cause to be published, encourage or approve any advertising relating to Chevrolet products which is likely to mislead or deceive the public, and Dealer will not publish, cause to be published or approve any advertising relating to Dealer's sale of Chevrolet products which is likely to mislead or deceive the public.

19. *Care of Owner*

A. Conditioning of new motor vehicles.—Dealer will condition each new motor vehicle and chassis before delivery, in accordance with Chevrolet's pre-delivery inspection schedule.

B. Owner's service policy.—Dealer will execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy", on forms furnished by Chevrolet. Dealer will promptly perform and fulfill all the terms and conditions of said Policy and authorizes Chevrolet to change its account at the uniform rate established by Chevrolet for coupons covering inspections on new Chevrolet motor vehicles sold by Dealer and performed by other Chevrolet dealers under such "Owner's Service Policy".

C. Stock of parts.—Dealer will carry in stock at all times during the life of this Agreement an adequate number and assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis.

D. Representations as to parts.—Dealer will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as new Chevrolet repair parts, any part or parts which are not in fact new Chevrolet repair parts as defined in subsection A of Section 10 of this Agreement.

E. Mechanical staff.—Dealer will employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners.

F. Warranty adjustment.—Dealer will replace any defective part or parts in fulfillment of the warranty set forth in Section 9 hereof without expense to the owners of such vehicles. For such warranty work and for other policy and warranty work performed by Dealer for Chevrolet's account Chevrolet will reimburse Dealer therefor as follows:

Parts: If the replaced part or parts are returned to and found by Chevrolet to be defective, Chevrolet will pay or credit to Dealer an amount equal to the then current Dealer net price of such part or parts plus ten percent (10%). The return of such parts to Chevrolet shall be made in accordance with the provisions of subsection 10D hereof.

Labor: Chevrolet will pay or credit Dealer on the basis of the Chevrolet Flat Rate System of time allotments as recommended and furnished by Chevrolet at one hundred per cent (100%) of the labor rates related thereto as agreed upon with Chevrolet.

G. Customer relationship.—Dealer will make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis and all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and will establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer, which cannot be readily remedied, shall be promptly reported in detail to Chevrolet.

20. Signs

Dealer will purchase, erect, and maintain at Dealer's expense the following signs:

A. Product sign.—A standard product electric sign in a conspicuous place outside Dealer's showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. Service sign.—A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Other Necessary signs.—Such other signs as are necessary to advertise Dealer's business property on a basis mutually satisfactory to both Chevrolet and Dealer.

21. Chevrolet name and trade-marks

A. Chevrolet's exclusive rights.—Chevrolet is entitled to the use of the word "Chevrolet," and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories.

B. Discontinuance of Use Upon Termination.—If the word "Chevrolet" is used in the name under which Dealer's business is conducted or the word "Chevrolet" or any Chevrolet trade-mark, including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Chevrolet, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connection with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty, or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

C. Dealer's liability for failure to discontinue use.—If Dealer, after termination of this Agreement, shall refuse or neglect to keep and perform the provisions of subsection B above, Dealer shall reimburse Chevrolet for all costs, attorneys' fees and other expenses incurred by Chevrolet in connection with legal action to require Dealer to comply therewith.

22. Advertising and promotional fund

In order to give Chevrolet dealers the advantage of a comprehensive and co-ordinated dealer advertising program, an Advertising and Promotional Fund, composed of a dealer portion and a factory portion, has been established and is administered by Chevrolet in accordance with the provisions set forth in the Chevrolet Dealer Price List.

A. Dealer contributions.—Chevrolet will collect the amount set forth in the Chevrolet Dealer Price List as the "Dealer Contribution" for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such amount will be credited to the dealer portion of the Fund for the account of Dealer.

B. Factory contributions.—Chevrolet will pay into the fund the amount set forth in the Chevrolet Dealer Price List as the "Factory Contribution" for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such amount will be credited to the factory portion of the Fund.

C. Modification of Advertising Program.—During the term of this Agreement the provisions of the aforesaid advertising program may be modified from time to time either to limit its application and coverage or to broaden its application and coverage to include such items as sales promotional activities. Likewise, the amount of the Dealer and Factory Contributions for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer may be increased or decreased from time to time with the announcement of new yearly model motor vehicles to compensate for increases or decreases in advertising and other costs; provided, however, that the amount of the Factory Contribution to the Fund for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer shall at no time be less than fifty per cent (50%) of the amount of the Dealer Contribution for each such motor vehicle and chassis.

TERMINATION OF AGREEMENT

23. Termination

A. Termination by dealer.—Dealer may terminate this Agreement by written notice of termination delivered to Chevrolet, such termination to be effective one (1) month after receipt by Chevrolet of such notice.

B. Termination for cause.—(1) If Chevrolet or Dealer requires a license for the performance of any obligation under or in connection with this Agreement in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties shall fail to secure or maintain a license or renewal thereof or if such license shall be suspended or revoked, irrespective of the cause or reason therefor, either party may immediately terminate this Agreement by giving to the other party written notice of such termination.

(2) If Dealer does not conduct its business in accordance with any requirement set forth in Sections 11 through 17, inclusive, or Section 19 of this Agreement, Chevrolet may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt of such notice.

(3) In the event of the death or incapacity of Dealer or any person named in Paragraph Third hereof Chevrolet may terminate this Agreement. However, to facilitate an orderly termination of the business relationships between Chevrolet and Dealer and any contemplated liquidation of the business of the dealership, Chevrolet will, upon receipt of written request therefor made by the executor(s), administrator(s) or representative(s) of the deceased or incapacitated person within thirty (30) days from the date of such death or incapacity, defer the exercise of such right to terminate and will continue to operate with Dealer under the terms of this Agreement for a period, to be determined by Chevrolet, of not less than ninety (90) days and not more than one (1) year from the date of such death or incapacity and this Agreement will terminate at the expiration of such period. If such written request is not received by Chevrolet within such thirty (30) day period, Chevrolet may then terminate this Agreement.

(4) Chevrolet may terminate this Agreement immediately by delivering to Dealer or its representative written notice of such termination in the event of the happening of any of the following:

(a) Removal, resignation, withdrawal or elimination from Dealer or dealership for any reason of any person named in Paragraph Third of this Agreement.

(b) Any attempted transfer or assignment of this Agreement or any right or obligation hereunder.

(c) Any misrepresentation to Chevrolet as to the direct and/or indirect ownership of Dealer, or any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any interest in the direct or indirect ownership or active management of Dealer without the prior written approval of Chevrolet.

(d) Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Chevrolet.

(e) Insolvency of Dealer; filing of a voluntary petition in bankruptcy by Dealer; filing of a petition to have Dealer declared bankrupt, provided that it is not vacated within thirty (30) days from date of filing; appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; execution by Dealer of an assignment for the benefit of creditors.

(f) Conviction of Dealer or any principal officer, principal stockholder or manager of Dealer or any partner in Dealer or dealership of any crime which, in the opinion of Chevrolet, may adversely affect the good will or interests of Dealer, dealership or Chevrolet.

(g) Failure of Dealer to maintain dealership operation as a going business, open during customary business hours, for seven consecutive business days, provided such failure is not due to causes beyond Dealer's control and is without Dealer's fault or negligence.

24. Transactions After Termination

A. Effect of termination on orders.—In the event that a new Selling Agreement is not entered into by the parties upon expiration of this Agreement or in the event that this Agreement is terminated in accordance with any provision of Section 23, all orders of Dealer for motor vehicles, chassis, parts and accessories then outstanding shall be automatically cancelled. Termination of this Agreement shall not release Dealer, however, from the obligation to pay any sum which may then be owing Chevrolet or from the obligation to pay for any motor vehicle, chassis, or equipment for same which is special, as defined in subsection C of Section 2 of this Agreement, and which may have been ordered by Dealer and not shipped prior to any termination of this Agreement.

B. Termination deliveries.—In the event of termination of this Agreement under the provisions of subsection A of Section 23, or subsection B (3) of Sec-

tion 23 without any deferment of termination as provided for therein, but not otherwise, Chevrolet will use its best efforts to furnish Dealer with Chevrolet motor vehicles and chassis to fill Dealer's bona fide retail orders on hand on the date of termination not to exceed, however, the total number of motor vehicles and chassis delivered to Dealer by Chevrolet during the three (3) months immediately preceding the effective date of termination, subject, to the following conditions and limitations:

(1) Within ten (10) days following termination, Dealer shall deliver to Chevrolet a written schedule of Dealer's bona fide retail orders on hand on the date of termination. Such schedule shall show the name and address of each retail customer and the details with respect to each motor vehicle ordered, including model, body type, color and accessories and shall specify each bona fide order against which Dealer desires Chevrolet to make delivery up to the total number of motor vehicles required to be delivered by Chevrolet as above described. Those orders for which delivery is thus specified by Dealer, when approved by Chevrolet, shall constitute Dealer's Schedule of Termination Deliveries. No changes or substitution may be made by Dealer in such Schedule of Termination Deliveries and Chevrolet will not be obligated to make deliveries of any motor vehicle to Dealer except as specified therein. In the event of Dealer's failure to deliver to Chevrolet the detailed Schedule above required, Dealer shall have no further rights.

(2) Dealer shall accept any motor vehicle required to be delivered by Chevrolet hereunder against Dealer's Schedule of Termination Deliveries immediately upon notification by Chevrolet of the availability to Dealer of such vehicle and in accordance with the terms and conditions of sale established by Chevrolet and in effect at the time of shipment. In the event of its failure to do so, Dealer shall have no further right to receive such vehicle or any other vehicle in lieu of it.

(3) Vehicles shall be delivered by Chevrolet hereunder in substantial accordance with the schedule and basis of delivery in effect with respect to other dealers in the same zone at the time of Dealer's termination.

(4) Dealer shall give Chevrolet notice immediately of cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries.

(5) In the event of the cancellation for any reason of any retail order set forth in Dealer's Schedule of Termination Deliveries before delivery by Chevrolet of a motor vehicle to apply against such order, Chevrolet shall be released from any obligation to make delivery of such vehicle.

(6) Dealer shall provide proper and adequate facilities in accordance with the terms and provisions of this Agreement to effect the delivery and handling of motor vehicles to be supplied upon termination under this subsection 24B.

C. Effect of transactions after termination.—The acceptance of orders from Dealer or the continuance of sale of products to Dealer or any other act of Chevrolet after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination.

D. Rights of surviving persons named in paragraph third.—If this Agreement should be terminated by Chevrolet under the provisions of subsection 23 B(3) or 23 B(4)a and at the time of such termination another person is named in Paragraph Third on the basis of being qualified as an operator as distinguished from being qualified solely on the basis of a financial interest, and if such other person owns a financial interest of at least twenty-five per cent (25%) or acquires such an interest within a reasonable time (considering then existing circumstances) after the date of such termination, then, subject to the provisions of any Widow's Financial Participation Addendum and any Interim Agreement Addendum signed by all parties named in Paragraph Third of this Agreement, and unless the right to receive the offer hereinafter provided for has been waived in an Interim Agreement Addendum by the party otherwise entitled hereunder to receive such offer, Chevrolet shall offer such other person a new Selling Agreement for the unexpired balance of the term of the Selling Agreement being terminated. If more than one other person be named in Paragraph Third at the time of such termination who can qualify under the conditions set forth above for such a new Selling Agreement, such persons must agree in writing as to which one will be offered the new Selling Agreement. If such persons do not agree as to the successor dealer within a reasonable time, Chevrolet shall not be obligated to offer a new or substitute Selling Agreement to any of such persons.

25. Chevrolet's right to repurchase when agreement is terminated

In the event of termination of this Agreement; or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement:

A. Chevrolet will purchase from Dealer and Dealer will sell to Chevrolet:

(1) Cars: All new and unused Chevrolet motor vehicles and chassis of the current model on hand in Dealer's place of business or in Dealer's possession at Dealer's net cost, including destination charges paid to Chevrolet thereon.

(2) Parts: All unused and undamaged Chevrolet repair parts listed in Chevrolet's current Dealer Parts and Accessories Price Schedule and purchased direct from Chevrolet, or purchased from an outgoing Chevrolet dealer as a part of Dealer's initial Chevrolet parts inventory, and on hand in Dealer's place of business or in Dealer's possession at the then current dealer net prices plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

(3) Accessories: All unused and undamaged Chevrolet accessories and service supplies purchased direct from Chevrolet during the twelve (12) month period immediately preceding the effective date of such termination and on hand in Dealer's place of business or in Dealer's possession at the then current dealer net prices plus five per cent (5%) thereof for packing costs and plus reimbursement for transportation charges to destination specified by Chevrolet.

(4) Commercial bodies: All new and unused commercial bodies and cabs of current models purchased direct from Chevrolet on hand in Dealer's place of business or in Dealer's possession at Dealer's net prices according to current Price Lists then in force plus transportation charges paid to Chevrolet thereon. In the event that any such commercial bodies or cabs have been mounted on chassis by Dealer, the price to be paid therefor shall be the net price to Dealer for the complete unit according to current list prices, even though Dealer purchased same separately at a higher price.

(5) Signs: Any signs belonging to Dealer of a type recommended in writing by Chevrolet and bearing the word "Chevrolet", at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

B. If Dealer desires to sell the same, Chevrolet will purchase all the special tools of a type recommended by Chevrolet and designed specifically for service of Chevrolet motor vehicles which were purchased by Dealer during the three (3) year period immediately preceding termination, while Dealer has been operating under a Chevrolet Selling Agreement, at a price mutually agreed upon by Chevrolet and Dealer. If Chevrolet and Dealer cannot agree on a price, they shall select a third party who shall set the price.

C. Dealer shall, within thirty (30) days following the date of termination, furnish Chevrolet with a list of the motor vehicles, chassis, parts, accessories, signs and tools aforesaid.

D. Upon demand and tender by Chevrolet of the purchase price determined as aforesaid, Dealer will deliver such goods to Chevrolet forthwith in accordance with Chevrolet's instructions.

E. Dealer shall execute and deliver to Chevrolet any instruments necessary to convey title to the aforesaid property. If such property is subject to lien or charge of any kind Dealer will procure the discharge and satisfaction thereof prior to the repurchase of such property by Chevrolet.

26. Loss on Premises

A. *Premises owned by dealer.*—1. Terminations to which applicable: In the event of termination of this Agreement by Chevrolet under the provisions of subsection B (2) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of Chevrolet's failure to secure or maintain any required license or renewal thereof as provided in subsection B (1) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of the incapacity, for reasons of health, of Dealer or any person named in Paragraph Third of the Agreement, or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement, but not otherwise, the provisions of this subsection 26A shall apply.

2. Premises to which applicable: The provisions of this subsection 26A shall be applicable only to premises which are owned by Dealer and carried on Dealer's books and records as land and building assets at the time that Dealer first has knowledge that a termination on one of the bases specified in subsection 26A above will become effective, and which are used by Dealer solely in the perform-

ance of Dealer's obligations under this Agreement, or solely in the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, if any, and such one or more other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement.

3. Chevrolet's obligation: Upon the written request of Dealer made to Chevrolet within the time hereinafter specified, Chevrolet will assist Dealer in the orderly disposition of the aforesaid premises, to the end that the equities of Dealer will be protected, and Dealer will not suffer a loss on said premises in relation to the market value thereof as of the time of termination. In effecting such disposition of Dealer's premises under the provisions of this subsection 26A3 the following conditions shall apply:

(a) Dealer's application for assistance will include a written representation to Chevrolet of Dealer's intention to retire from the business of selling new or used motor vehicles in the general selling area wherein Dealer operated under this Selling Agreement.

(b) The assistance to be provided by Chevrolet hereunder will be in the form of either locating a purchaser who will offer to purchase Dealer's premises at a fair and reasonable price as hereinafter defined, or locating a lessee for Dealer who will offer to lease Dealer's premises for reasonable term at a fair and reasonable rental as hereinafter defined. Moreover, if Chevrolet does not locate such a purchaser or lessee within a reasonable time, Chevrolet will offer either to purchase or lease Dealer's premises at such fair and reasonable purchase price or rental.

(c) In establishing fair and reasonable prices for Dealer's premises for the purpose of the sale or lease thereof, consideration will be given (i) to the circumstances under which the premises were originally provided by Dealer for the performance of this Selling Agreement or any prior Chevrolet Selling Agreement; (ii) to the adequacy of the premises for a Chevrolet Dealer Selling Agreement and the length of time such facilities have been used by Dealer in the performance of this Agreement or any other dealer or distributor Selling Agreement; and (iii) to the fair appraised value of the premises as determined by the average of the independent appraisals of three qualified real estate appraisers, of whom Dealer and Chevrolet shall each select one, and the two thus selected shall in turn select the third. Based on these considerations Dealer and Chevrolet shall agree upon a fair and reasonable purchase price and rental value for Dealer's premises.

(d) Upon receipt of a bona fide offer from a prospective purchaser or a prospective lessee, as the case may be, Dealer will sell Dealer's premises at the purchase price established as provided above or will lease Dealer's premises for a reasonable term at the rental established as provided above. The failure of dealer to accept such a bona fide offer from a prospective purchaser or from a prospective lessee shall constitute a complete release of Chevrolet from any obligation to purchase or lease Dealer's premises as aforesaid and any other obligations under this subsection 26A.

(e) Any application for assistance from Chevrolet under the provisions of this subsection 26A must be made to Chevrolet in writing within thirty (30) days from the effective date of termination, and if Chevrolet does not receive a written application for such assistance within that time, Chevrolet shall be released from any and all obligations hereunder.

B. Premises leased by dealer.—1. Terminations to which applicable: In the event of termination of this Agreement by Chevrolet under the provisions of subsection B (2) or B (3) of Section 23 hereof, or in the event Chevrolet terminates this Agreement because of Chevrolet's failure to secure or maintain any required license or renewal thereof as provided in subsection B (1) of Section 23 hereof, or in the event Chevrolet does not offer Dealer a new Selling Agreement upon the expiration of the term of this Agreement, but not otherwise, the provisions of this subsection 26B shall apply.

2. Premises to which applicable: The provisions of this subsection 26B shall be applicable only to premises leased by Dealer and used by Dealer solely in the performance of Dealer's obligations under this Agreement, or solely in the performance of Dealer's obligations under this Agreement and one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, if any, and such one or more other dealer or distributor Agreements are terminated simultaneously with the termination of this Agreement; provided, moreover, that the premises

involved shall have been leased by Dealer, and the lease or leases shall have been in effect, prior to the time Dealer had knowledge that a termination on one of the bases specified in subsection 26B 1 above would become effective, and the lease or leases of the premises shall continue subsequent to the effective date of termination of this Agreement.

3. Chevrolet obligation: Upon the written request of Dealer made to Chevrolet within the time hereinafter specified, Chevrolet will endeavor to assist Dealer in the liquidation of Dealer's obligation under any existing lease or leases of the aforesaid premises, to the end that the equities of Dealer will be protected and the normal losses incident to the liquidation of a business will be minimized. In providing such assistance to Dealer, the following conditions shall apply:

(a) Dealer's application for assistance will include a written representation to Chevrolet of Dealer's intention to retire from the business of selling new or used motor vehicles in the general selling area wherein Dealer operated under this Selling Agreement.

(b) The assistance to be provided by Chevrolet hereunder will be in the form of (i) locating a tenant or tenants, satisfactory to the Lessor or Lessors, who will offer to sublet the premises for the balance of the term of the lease or leases or who will take an assignment and assume the obligations of such lease or leases; or (ii) effecting arrangements satisfactory to Chevrolet and the Lessor or Lessors whereby the lease or leases with Dealer will be cancelled; or (iii) the subletting by Chevrolet of the premises from Dealer, provided that the unexpired term of the lease or leases shall not be in excess of twelve (12) months from the effective date of termination of this Agreement. In the event Chevrolet does not locate a sublessee or assignee, or arrange for the cancellation of Dealer's lease or leases, or sublet the premises, as provided above, Chevrolet will pay as reimbursement to Dealer for the monthly rental specified in Dealer's lease and paid by Dealer for a period of twelve (12) months after the effective date of termination, or for the balance of the term of the lease, whichever shall be the lesser, (1) a fair monthly rental, as of the date of termination, as determined by three real estate appraisers, one selected by Chevrolet, one selected by Dealer and the third selected by the other two appraisers, or, at the option of Chevrolet, (2) the monthly rental specified in the lease.

(c) If, for a period of more than one (1) month immediately following the effective date of termination, the premises involved or any part thereof are occupied by Dealer or by anyone else for business or any other purpose, Chevrolet will be discharged from its obligation hereunder to reimburse Dealer for rental paid as aforesaid with respect to any month for any part of which the premises or any part thereof are so occupied; provided, however, that where the dealership premises consist of more than one parcel of property or more than one building, each of which is separately useable, distinct and apart from the whole premises or any other part thereof, with appropriate ingress and egress, each such parcel or building may be considered separately for the purpose of this subsection 26B3 (c).

(d) If requested by Chevrolet, Dealer shall use its best efforts to effect a settlement of any lease or leases with the Lessor or Lessors to the same extent as if Chevrolet were not obligated, as provided herein, to assist Dealer in the liquidation of Dealer's obligations under any existing lease or leases, but any settlement shall be approved by Chevrolet before being finally accepted by Dealer. Any reduction in rental as a result of any such settlement shall proportionately reduce Chevrolet's obligation hereunder.

(e) If the premises involved are also used by Dealer in the performance of Dealer's obligations under one or more other dealer or distributor Agreements with Pontiac, Oldsmobile, Buick, Cadillac or GMC Truck & Coach Divisions of General Motors Corporation, which are terminated simultaneously with the termination of this Agreement, such other Division or Divisions of General Motors Corporation will arrange with Chevrolet as to which Division will assume the obligations to Dealer under this subsection 26B, and Dealer will be so notified in writing.

(f) Upon receipt of a bona fide offer from a prospective tenant or tenants satisfactory to the Lessor or Lessors, Dealer will sublet Dealer's premises or assign the lease or leases thereon. In the event Chevrolet arranges a cancellation of the lease or leases on Dealer's premises without cost to Dealer, Dealer will execute a cancellation agreement with the Lessor or Lessors. The failure of Dealer to sublet the premises, to assign the lease or leases, to execute a cancellation agreement with the Lessor or Lessors or to use its best efforts if requested, to effect a settlement, all as provided above, shall constitute a complete release of Chevrolet from any further obligations under this subsection 26B.

(g) Any application for assistance from Chevrolet under the provisions of this subsection 26B must be made to Chevrolet in writing within thirty (30) days from the effective date of termination, and if Chevrolet does not receive a written application for such assistance within that time, Chevrolet shall be released from any and all obligations hereunder.

(h) In the event Dealer's obligations under existing leases are not otherwise liquidated and Dealer is entitled to reimbursement from Chevrolet under the provisions hereof for any rentals paid by Dealer, Dealer shall file its claim for such reimbursement with Chevrolet within two (2) months after the expiration of the period covered by such claim. Chevrolet shall have access to and may audit Dealer's books and records insofar as may be necessary to verify claims filed under this subsection 26B.

(i) The term "Dealer" as used herein shall be interpreted to include Dealer's executor(s), administrator(s) or representative(s) in the event the Selling Agreement is terminated in accordance with the provisions of subsection B (3) of Section 23 hereof.

C. Negotiations.—The provisions of subsections 26A and 26B dealing as they do with situations as they will arise in the future must of necessity be stated in broad terms, and to accomplish the fair and equitable results intended all negotiations and transactions contemplated by subsections 26A and 26B will be carried on in the utmost of good faith on the respective parts of both Dealer and Chevrolet.

D. Termination due to death of Dealer.—If this Agreement is terminated due to the death of Dealer or any person named in Paragraph Third hereof, Chevrolet, if requested to do so, and without assuming any legal obligations or liability with respect thereto, will render assistance to the representatives of the estate of Dealer in locating a purchaser or lessee for any premises owned by Dealer and used in the performance of Dealer's obligations under this Agreement at the time of said termination.

GENERAL PROVISIONS

27. Supplemental provisions

In view of the extended term of this Agreement and the desire of Dealer and Chevrolet to keep the provisions hereof current with the distribution practices in the automobile industry, which practices may vary from time to time as the result of the enactment of federal or state laws or new or different interpretations by the courts or governmental agencies of existing laws, it is agreed that this Agreement may be supplemented at any time to include provisions relating to the general subject matters of "bootlegging", "territory security" and "service responsibility", as those terms have been used or interpreted by Congressional Committees or Subcommittees in hearings or in proposed legislation, provided that such supplemental provisions are incorporated in the Selling Agreements of all other Chevrolet dealers, in jurisdictions in which such provisions are not prohibited by state or local laws.

28. Dealer not made agent or legal representative of Chevrolet

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Chevrolet for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility in behalf of or in the name of Chevrolet or to bind Chevrolet in any manner or thing whatsoever.

29. Responsibility for dealer's commitments

Except insofar as it is specifically provided otherwise in this Agreement, Dealer shall be solely responsible for any and all obligations or responsibilities incurred or assumed by Dealer in the performance of this Agreement.

30. Local taxes

Dealer hereby certifies that all motor vehicles and chassis, parts, accessories and items similar thereto purchased from Chevrolet are for resale in the course of Dealer's business. Dealer further certifies that Dealer has obtained any license required to collect sales or use taxes incurred in any such resale transactions, and that the number, if any, of such license has been or will be furnished to Chevrolet. Dealer agrees, as to any such motor vehicles and chassis, parts, accessories or items similar thereto which are withdrawn from stock and put to a taxable use in lieu of or prior to resale, and as to any tangible property which Dealer purchases for use and not for resale, to pay directly to the appropriate taxing authority any sales, use or similar taxes incurred by such use or

purchase, to file any tax returns required in connection therewith, and to hold Chevrolet harmless from any claims or demands made by such taxing authority with respect thereto.

31. Notices

Any notice required to be given by either party to the other under or in connection with this Agreement shall be in writing and delivered personally or by mail. Notices to Dealer shall be directed to Dealer, or its representative at Dealer's place of business; notices to Chevrolet shall be directed to the Zone Manager of the area in which Dealer is located.

32. No implied waivers

The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself.

33. Applicable law

This agreement is to be governed by and construed according to the laws of the State of Michigan. If, however, any provision in anywise contravenes the laws of any state or jurisdiction where this Agreement is to be performed, such provision shall be deemed not to be a part of this Agreement therein.

34. Sole agreement of parties

There are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to the sale or servicing of Chevrolet motor vehicles, chassis, parts or accessories.

This Agreement cancels and supersedes all previous agreements between the parties.

No change in, addition to, or erasure of any printed portion of this Agreement (except the filling in of blank lines) shall be valid or binding upon Chevrolet unless the same is approved in writing by the General Sales Manager of Chevrolet.

No agreement between the parties which is at variance with any of the provisions of this Agreement or which imposes definite obligations upon either party not specifically imposed by this Agreement or which is intended to be effective or performed following the expiration or other termination of this Agreement and imposes obligations or extends the time for performance thereof other than as provided in this Agreement shall be binding upon either party unless it bears the facsimile signature of the General Sales Manager and, except for Dealer Price Lists, is countersigned by an Assistant General Sales Manager, a Regional Manager, and Assistant Regional Manager or Zone Manager of Chevrolet, and is executed or accepted by Dealer.

Mr. HUFSTADER. I would also like to point out that without waiving any of his legal rights a dealer may appeal the cancellation of his selling agreement for cause to the impartial umpire, and pending the determination of the appeal the termination is suspended and the franchise relationship is continued.

I would now like to direct my remarks to the term of a franchise agreement in a general sense and the question of renewal or nonrenewal.

When a prospective dealer makes application for a franchise, he makes representations as to his qualifications and experience, as well as to the contemplated performance of his obligations as a dealer.

In addition to his interest in the product, he is also concerned with the obligations which the manufacturer is prepared to assume in the franchise relationship. The prospective dealer makes his decision as to whether he will, or will not, accept the franchise. The manufacturer of the product makes the decision as to whether he will or will not grant it. Implicit in the relationship is the personal element, built upon careful mutual appraisal and good faith.

If the relationship is entered into and maintained in good faith, with the fulfillment of the representations and obligations by the respective parties, the term of the franchise is not too material as a practical matter. In such situations, renewals are generally automatic. We want the dealer and the dealer wants us.

However, the continuance of the relationship becomes a matter of concern to both parties, if either party fails to continue to perform his obligations. It is also a matter of concern of the dealer if the value of the franchise decreases importantly. For the protection of the dealer, there is the right of termination on 30 days' notice without cause.

For the protection of the manufacturer, there is the right to terminate for certain specified causes. The validity of such a cause as a basis for the exercise of the right of termination, may be tested in the courts with relief in the form of money damages, if it is found that cause did not exist.

Because of the basic personal element in the franchise relationship, there cannot be a right of assignment, other than the dealership continuation or succession previously mentioned. This must be determined for a successor dealership on the same basis as served for the establishment of that dealership.

Also because of the basic personal element involved in the relationship, provision must be made for the possible dissolution of that relationship after the lapse of a reasonable period of time. This is as important in the franchise relationship as it is in an employment relationship. In both it may be accomplished in the same way, by a term contract.

The recognition of such a contingency is neither unusual nor arbitrary. Employment is generally established and continues under term contracts. Officials are elected or appointed to office for definite terms.

Partnerships culminate in dispute and are dissolved. Businessmen cease to do business with each other.

The expiration of the agreement after a reasonable period of time is also necessary to enable the manufacturer to incorporate provisions necessary to implement the relationship because of changing conditions.

It is true that such provisions may be incorporated in existing contracts by mutual consent of the parties, but no matter how reasonable such provisions, there may well be dealers who will not accept them.

If the great majority recognize that the provisions are reasonable and necessary, the manufacturer should not be in the position of being unable to make the provisions part of his standard agreement for all dealers, simply because one or a few dealers object to the provisions.

What is a reasonable term depends on all the circumstances. We have felt in the past that a 1-year term was reasonable. The record shows that the great majority of our dealers have been associated with us for many years. However, the reaction by the dealers to the 5-year term has been very favorable as it gives them a greater feeling of security.

On the question of nonrenewal of a franchise at the expiration of its term, it is reasonable to assume that there will always be some dealers who will not be given a new agreement upon expiration of

the term of a selling agreement, but on the basis of past history these should be relatively few. Surely no one would expect that a dealer should be guaranteed a franchise for life. It may be that, after his appointment as a dealer, he does not develop into a satisfactory operator over the 5-year term.

Even an otherwise good-performing dealer may become undesirable because of personal conduct or actions which are not a basis for canceling the franchise agreement during its term. Surely there should be a right to part company under such conditions after a reasonable period of time.

Nonrenewals were somewhat higher in the years 1953, 1954, and 1955 than they were in the less competitive earlier postwar years, but were within the historical pattern of normal prewar years.

Similarly, resignations or voluntary terminations by dealers have been higher in this more recent period.

As I have already stated, for most of our dealers renewals are generally automatic. If we both wish to stay in business, the manufacturer needs the dealer and the dealer needs the manufacturer.

Furthermore, if the dealer who is not renewed feels aggrieved, he can appeal to the impartial umpire, who is a retired Federal district court judge, whose decision as to whether the dealer should be granted a renewal franchise agreement is binding upon the corporation.

Pending the determination of the appeal, the dealer continues to operate with all the rights and obligations of a dealer. If the determination of the appeal is in his favor, he continues as a dealer and receives a new selling agreement.

Finally, on nonrenewal the dealer is protected against unreasonable economic loss by the provisions of the selling agreement which I have already referred to. The corporation will repurchase all unused parts in the current parts price schedule, provided they are in good condition. We will also repurchase any new accessories brought within the preceding 12 months.

We will buy back all special service tools recommended by us for use in the dealership operation and purchased by the dealer within 3 years of termination.

Provision is also made for the repurchase of signs. With respect to owned premises, we will help the dealer locate a purchaser or lessee for his premises, or we will purchase or lease them at a fair and reasonable value to be determined by independent appraisal.

With respect to premises leased by the dealer, we will assist him in locating a substitute lessee or a sublessee, or failing this, and if he does not use the premises, we will reimburse him for the rental for the unexpired term up to a period of 12 months.

These benefits are available to the dealer even after a decision by the impartial umpire adverse to the dealer who appeals his non-renewal.

Under these circumstances, the dealer should not expect that he should have a franchise for life or for longer than a reasonable term, such as 5 years. If the impartial umpire has sustained the action of the corporation, he should accept that as an impartial confirmation of the corporation's good faith in deciding to part company and, in fact, under such circumstances he himself should not want to continue the association.

We do not bind the dealer to us for the term of the selling agreement. If he wishes to part company he may do so at any time under his right of termination on 30 days' notice without cause.

This is not an empty gesture on the part of the manufacturer. A dealer may wish to terminate the franchise relationship for any one or a combination of reasons—unsatisfactory profits or lack of profits in the dealership operation due to competitive conditions or other causes, availability of another franchise with a larger and more profitable operation, as well as conditions and circumstances personal to the dealer.

Giving specific consideration to the "good faith" which this legislation is designed to provide, we feel that in the administration and performance of the selling agreement by General Motors, as well as in the case of any termination or nonrenewal, "good faith" is fully provided for in our revised selling agreement and policies.

Cars are delivered to the dealer only on the basis of written orders. Parts may be returned within 90 days after purchase. The threat of nonrenewal under a short-term contract is eliminated. Channels of communication have been established for making the offices of the president of the corporation and the general managers easily accessible for dealer complaints.

Otherwise in the administration of the contract, a sales potential is established for each dealership and based on this a fair share of the manufacturer's product is made available for the dealer. But does the proposed bill impose a greater obligation upon the manufacturer in the sale and distribution of his product to any dealer? The report accompanying the Senate bill states that:

It is expected that the courts will be equally zealous in requiring good faith of the manufacturer under provisions of the franchise vital to the dealer's livelihood, such as his ability to obtain delivery of the type or volume of cars ordered. Does this mean that a dealer established with facilities and territory for a 200-car potential will have the right to order and obtain 500 cars? If so, what will happen to the normal pattern of distribution for all dealers as a group? What about bootlegging?

As to good faith in the cancellation of a franchise during its term, that is already provided for in the standards established and spelled out in the revised General Motors selling agreement. A review of the agreement will reveal that cancellation is not based on arbitrary or whimsical action or on the satisfaction and conclusive opinion of the manufacturer. Furthermore, the franchise can be canceled only for cause. Therefore, good faith is implicit in the selling agreement. If the dealer believes that he has not breached the contract and that the cancellation was not for due cause, he has a remedy and a day in court for any breach of contract or lack of good faith on the part of the manufacturer.

Finally, as for good faith on nonrenewal of a franchise, this is provided by the right of appeal to the impartial umpire and the provisions for assistance to the dealer on liquidation, already discussed. But does the proposed bill require something more? Assume that upon expiration of the term of the contract the record shows any of the following:

That the dealer was a deliberate and large-scale bootlegger; that he indulged in sharp practices with his customers; that his advertising,

while within the letter of the provision in the selling agreement relating to misleading and deceptive advertising, was not within the spirit of the provision and did not meet the accepted standard of the industry; that his personal conduct outside of his business was generally known locally to be improper and degrading; and finally that any one or a combination of these conditions reflected upon the good will of that dealer, other dealers, the manufacturer, and the product.

Should such a dealer on a nonrenewal be given a greater right or position than he would have as a new applicant for the same franchise? It is not at all clear under the proposed legislation that any or all of these conditions would constitute a defense of bad faith on the part of the dealer, since without other circumstances they are not illegal or contrary to the provisions of the selling agreement. In any event, should the burden of litigating these issues be imposed upon the manufacturer, or should he have the same legal right as any other party contemplating a contractual arrangement to select the party with whom he wishes to do business?

On this whole question of dealer-factory relationships, in just the past few weeks our car divisions have all met with their dealer councils. Mr. Curtice has talked with dealers individually. The executive vice president and car division executives in charge of dealer-factory relationships, have met with dealers in groups and individually. Car division executives and representatives have talked with them at the recent recontracting meetings. I personally have talked to many dealers.

General Motors dealers are deeply concerned with the problems of 1956 and the future. They do not talk of the 1930s, the 1940s, or the 1950s, prior to 1956. These General Motors dealers express no concern today about the selling agreement. They have on their minds three important problems. First, "bootlegging;" second "territory security;" and third, "improper advertising." It is the solution of these problems that they are seeking.

In all three there is an area in which the manufacturer under existing laws can assist by eliminating any possible contribution on his part to the causes of the problem. Similarly, there is an area in which the great majority of dealers may assist individually by not intentionally and deliberately indulging in these practices. However, if any dealer deliberately and intentionally indulges in these practices, he may not legally be restrained.

Finally, I would like to refer again to the statement of the sponsor of the Senate bill to the effect that—

without the day-in-court bill there would be nothing to prevent the manufacturer from restoring ipse dixit the conditions which previously existed.

As to this, I wish to repeat that at no time has General Motors voluntarily eliminated or minimized either by contract or policy, any right or privilege enjoyed by the dealer and regarded by the dealer group as beneficial or important to it. It was for legal reasons that the corporation, in 1949, eliminated from its selling agreements the so-called territory security and antibootlegging provisions regarded by many dealers as beneficial and important.

Furthermore, I know of no statement or testimony by any General Motors dealer on the subject of dealer-factory relations before any congressional subcommittee or in any meetings with dealers expressing

the fear or expectation that any manufacturer would take away any existing benefits or improvements or would restore any conditions which previously existed. Certainly General Motors cannot by dictum or pronouncement change the provisions of its 5-year selling agreements which expire on October 31, 1960. In this connection, every replacement dealer who has executed a selling agreement since March 1, 1956, has been given a full 5-year term.

In view of the foregoing General Motors believes that the proposed legislation is unnecessary and undesirable. We believe that generally the real objectives of this legislation as we understand them have already been accomplished by our new contract provisions and our policies. Furthermore, it fails to secure what the dealers and the industry really need for the solution of present-day problems. In fact, in our opinion it will make the solution of these problems more difficult.

I thank you.

Mr. ROGERS. Thank you, Mr. Hufstader.

I think you have been asked enough questions, and if there is nothing further you want to state—

Mr. POWER. May I point out that we were asked a question earlier with respect to dealer investments, and Mr. Hufstader said he would answer it after he finished the statement. I believe you asked the question.

Mr. HUFSTADER. I think both Congressman McCulloch and Congressman Keating asked it—no; I think it was Congressman Scott that spoke about the dual system of bookkeeping.

The General Motors accounting system has been one that has been in effect since 1927. There is a manual of accounting under which it operates.

It is a part of our selling agreement. We ask a dealer to provide us with a statement. And I would be very glad, if the committee so desires, to submit this manual, if you would like to have it as part of the evidence. It is available through a corporation that prints it, Reynolds & Reynolds. And it is the manual under which these accounting procedures function. It is entirely within the scope of the internal-revenue laws.

Mr. POWER. I might say that I don't believe Mr. Hufstader means to offer it for the record, not that we object to it going in the record, but if you want to inspect it and keep it, you can.

Mr. ROGERS. We would like to take it for the files, but not as part of the record.

Mr. POWER. That is right.

Mr. HUFSTADER. Yes, That is what I meant. Thank you, Congressman.

Mr. ROGERS. Yes.

(The document will be found in the files of the subcommittee.)

Mr. HUFSTADER. Now, the statement was made that the dealers' investment was adjusted to show a favorable position. I would like to state these facts:

The investment upon which the return is predicated is the net worth of the dealer, and at December 31, 1940, the net worth of General Motors' dealers was \$300,951,000, and that was represented by 17,044 dealers.

These data do not include the General Motors truck dealers, because we do not get statements from them. They are the car division dealers.

At the end of the year 1941, that net worth was \$371,047,000, and was represented by 16,436 dealers.

At the end of 1946, the net worth was \$679,023,000, represented by 14,331 dealers.

At December 31, 1954, it was \$2,085,835,000, represented by 16,843 dealers.

At December 31, 1955, it was \$2,133,049,000, represented by 16,945 dealers.

I submit that the records speak for themselves. There has been a very substantial and outstanding growth in their net worth, by practically—as a matter of fact, in comparison with 1940, there were 17,044 dealers, and at the end of 1955, 16,945 dealers.

Mr. ROGERS. Thank you so much for your statement.

Mr. HUFSTADER. Thank you, sir.

Mr. ROGERS. We are glad to receive it.

(General Motors subsequently submitted the following:)

GENERAL MOTORS CORP.,
Detroit, Mich., July 12, 1956.

Mr. H. M. MALETZ, *Chief Counsel,*
Antitrust Subcommittee, Committee on the Judiciary,
United States House of Representatives,
Washington 25, D. C.

DEAR Mr. MALETZ: When Mr. Hufstader was testifying before the subcommittee, Congressman McCulloch asked if Mr. Hufstader would submit to the committee the number of General Motors dealers with the respective number of years that they have been dealers for General Motors Corp. In response to this request, we herewith submit the following data as of May 31, 1956, with respect to the number of years General Motors dealers have had their franchises:

	Number of franchises	Percent to total franchise
Under 5 years	5, 482	26.6
5 to 9 years	4, 435	21.5
10 to 19 years	4, 178	20.2
20 years and over	6, 528	31.7
United States total	20, 623	100.0

Also during the course of the hearing there was a brief discussion between Mr. Hufstader and Congressmen Scott and Keating as to the percentage of dealer profit based on sales and based on investment, as well as an inquiry as to how the investment is figured. Mr. Hufstader asked that he be permitted to comment on that later in his testimony. Thereafter, he explained that the investment upon which the return is predicated is the net worth of the dealer and he submitted some figures showing the growth of the net worth of General Motors dealers over a period of years. In addition, he submitted the General Motors Dealers Standard Accounting System Manual.

Because of the apparent misunderstanding as to whether the calculation of return on investment is a fair measure of business success, I would like to quote the following from Financial and Operating Ratios in Management by James H. Bliss, in chapter VII at page 57:

"The relation of surplus net profits to net worth—the percentage earned on stockholders' investment—is the final summing up of all other relationships and measures of business efficiency. *It results from, and includes, all other relationships, earnings and expense ratios, turnovers, etc.* Favorable or unfavorable gross margins, expenses, operating earnings, turnover, etc., are all included in and affect the final net return on the stockholders' investment. *It is, in the last analysis, the measure of commercial success obtained in the management of the affairs of a business in all three management functions—merchandising, operating, and financial.*" [Italics ours.]

Also in connection with a comparison of such a rate of return on investment as between a manufacturer and all his dealers, it must be remembered that such a comparison might involve a very successful manufacturer having a very efficient management with dealers of varying efficiency and managements. The average of the dealers might be low in comparison with the return of the manufacturer

but the average of the very efficient dealers might be quite high in relation to the return of the manufacturer. This is illustrated by the following data with respect to the top ten percent of the General Motors dealers for the calendar year 1955, being 10 percent of dealers in number and greater than 10 percent in volume of sales by dealers:

Dealer group	Return on net worth	Investment turnover	Return on sales
	<i>Percent</i>	<i>Times</i>	<i>Percent</i>
Chevrolet.....	40.6	14.20	2.86
Pontiac.....	50.7	19.51	2.60
Oldsmobile.....	55.9	28.07	1.99
Buick.....	68.1	33.72	2.02
Cadillac.....	77.9	17.27	4.51
Total United States.....	46.8	18.15	2.58

The foregoing is based on the total sales of all departments of the dealership operations and net profits after income taxes as reported on dealers' financial statements. The net worth (investment) is calculated as of January 1, 1955.

In view of the fact that this information is being submitted as a result of the request or discussion of Congressmen McCulloch, Keating, and Scott, we are sending them copies of this letter.

Very truly yours,

A. F. POWER,
Assistant General Counsel.

We have a statement from Mr. C. L. Jacobson, the vice president of the Chrysler Corp., which we will insert in the record at this point. (The prepared statement of Mr. Jacobson is as follows:)

STATEMENT OF CHRYSLER CORP., PRESENTED BY C. L. JACOBSON

We appreciate the opportunity extended to us by Chairman Celler to present our views on H. R. 11360 and S. 3879.

This statement is addressed principally to S. 3879, as the Senate amended it in order to remove some of the more objectionable features of this proposed legislation. We agree that the amendments the Senate adopted on June 19, 1956, were most necessary and we are assuming in this statement that they will be incorporated in H. R. 11360 if that bill is reported out. We shall, however, discuss briefly at the close of this statement provisions of H. R. 11360 which have been deleted or changed in S. 3879.

The Senate has imposed on this committee an unusually heavy responsibility in considering this measure since the Senate Judiciary Committee held no hearings and Senator O'Mahoney stated in the course of debate that he had assurance that hearings on the bill would be held by this committee and opportunity would be afforded here for full examination of the measure after Senate passage.

There thus devolves on this committee virtually the whole responsibility for amending the bill to make it workable and fair, if it is to become law.

The bill's ostensible purpose is to clarify the right of a franchised dealer in motor vehicles to bring suit for compensatory damages in Federal court against the manufacturer whose franchise he holds, if the latter does not act in good faith in his relations with the dealer under the franchise.

In our view such legislation is not necessary to achieve this purpose. But if that were the sole and simple effect of the proposed measure we would not press our opposition to it.

Coercion, intimidation, and lack of good faith have no part in the practical and satisfactory operation of the seller-customer relationship that Chrysler Corp. believes has to exist between automobile factory and dealer for the full development of the service to the public which both are in business to perform.

Chrysler Corp. has always acted in the belief that good faith is essential to enduring success in any seller-customer relationship.

We have previously testified before congressional committees that we believe our factory-dealer relation is founded on mutuality and the good faith of both parties. Our own agreements with our dealers do not have any expiration date, and do not recite a catalog of reasons for termination, because they were conceived and have been carried out in a spirit of permanence—an expectation that

the relationship would continue for as long as the dealer was interested in and capable of effective representation of our products in his community.

Causes for disagreement do arise between parties. Dealers have left us and we have had to cancel dealers. Litigation has sometimes ensued and decisions and verdicts have been rendered both for and against us.

At first glance, therefore, no new factor is introduced by this bill; it appears merely to insure dealers "a day in court." However, close examination of its sweeping language and its brief legislative history discloses that its general and vague terms could invite the broadest interpretation, opening up areas of litigation far beyond the stated purpose of the bill, or what we believe to be the objectives of its advocates. In the Senate debates, the proponents of the bill had great difficulty in deciding what the effects of its language might be.

Senator Monroney emphasized repeatedly that the meaning and effect of the bill's language was for the courts to decide. He said that "if we were placing the jurisdiction in matters of this kind in a commission or in a board, I would be somewhat concerned."

We submit that, in the absence of precise terms and clear standards, it will be fully as difficult for the courts as for a board or commission to determine what the bill means.

Section 1 (a) seeks to define the "automobile manufacturer", but is so wide in its inclusion of persons "acting for" the manufacturer that claims might be made under it to cover entirely independent acts towards a dealer by distributors, by advertising agencies, by banks and finance companies and, quite possibly, by other dealers engaged in business in the same area as a complaining dealer.

The bill is not explicit in excluding dealers outside the United States in export markets, where the relationship of dealer and factory may come under altogether different statutes.

The simple intent of section 1(e), if interpreted in the words of the bill's proponents on the floor of the Senate during debate and the process of amendment, is to define good faith on the part of the manufacturer as the duty to act fairly and without coercion, intimidation and threats, so as to preserve the equities conferred upon the dealer by the franchise.

This purpose we believe to be immeasurably clouded by two groups of words occurring in the section. The first of these refers to the duty to "guarantee * * * freedom from" coercion, intimidation or threats of coercion or intimidation. That guarantee might be construed as creating in the manufacturer a responsibility of guardianship towards the dealer against acts of persons quite remote from the manufacturer's control, and conceivably against the acts of other dealers selling the products of the same manufacturer.

The second is the sweeping requirements of preserving "all the equities * * * inherent in the nature of the relationship [created] between such parties by such franchise."

We do not believe it is the serious purpose of the bill's proponents to bid the manufacturer "preserve" all the equities of the dealer regardless of their scope, or in fact against any force except acts taken in bad faith by direct representatives or agents of the manufacturer.

Proper legislation cannot seek to protect a right to profitable operation under all circumstances nor to be free from competition of other dealers.

We do not believe that a statute should use such terms as "coercion" and "intimidation" without definition. Other legislation using such terms has accompanied them with definitions of meaning which, while not excluding construction by courts and regulatory agencies, do guide and prescribe standards of reference.

Able dealers have repeatedly said, while legislation of this character has been under discussion, that vigorous selling is the heart of the automobile business and must be carried on if the dealer is to profit in serving the public. They have recognized that this energetic selling stems in large part from the stimulation of the manufacturer's proper acts and practices.

The prevention of abuses should not run to prohibiting practices that are proper.

Whether a particular act or statement would intimidate or coerce a particular dealer would depend largely on his own mental attitude and personality. Where one dealer might feel himself intimidated and coerced if we persistently and urgently asked him to order more products from us or to push his sales, another dealer might feel himself under no pressure at all.

The lack of definition of these terms could seriously inhibit the persuasive selling efforts that have done so much to build the industry and give value to the dealer's franchise.

We believe that it is the intent of this bill simply to promote good faith in complying with the terms of franchises in the automobile business. We are in full agreement with this objective. We do believe, however, that in attempting to define the term "good faith", and in other definitions, the bill as now drafted goes far beyond its stated purpose. We find the majority of defects in this bill to be in section 1.

However, in section 2, the provision for attorneys' fees is unusual and will do much to encourage lawyers to institute a multiplicity of nuisance suits, and should be deleted.

Section 2 also goes beyond what we understand to be the principal concern of those interested in fostering this kind of legislation, namely to prevent arbitrary terminations of franchises. In effect, it puts the day-to-day conduct of the business on a litigatory rather than cooperative basis.

With reference to provisions in H. R. 11360 which were amended in S. 3879, we believe that the amendments constituted improvement as far as they went, and we are confident that this committee's deliberations will lead to the same conclusion.

The provision permitting suit for twofold damages was so manifestly punitive and unjust that the Senate quite rightfully struck it from its version of the bill.

The definition of "good faith" as it stands in H. R. 11360 is completely one-sided, imposing no similar requirement on the dealer's conduct of his relations with the manufacturer. Neither does the bill make clear the manufacturer's right to cite the dealer's lack of good faith in defense of any action brought by the dealer under the bill. These particular defects were corrected in S. 3879 by amendments which applied the "good faith" provision to both parties to the manufacturer-dealer agreement and which expressly recognized lack of good faith as a defense to suits under the bill.

Section 2, as it stood in the unamended version of the bill, declaring that any automobile manufacturer "has the duty to act in good faith in all dealings or transactions" with the dealers, was deleted from S. 3879 as redundant in the light of the rewording of section 1 (e) defining "good faith."

All of the amendments which were incorporated in S. 3879 were steps in the right direction, but even with these changes, the bill leaves much to be desired, as we have indicated in this statement. We believe that it would promote litigation unnecessarily, would inhibit proper sales efforts by both manufacturer and dealer, and thus retard the dynamic force of the automobile industry in the national economy.

We wish to thank the committee for this opportunity to present our views on such an important piece of proposed legislation.

Mr. ROGERS. Now, the next witness is Mr. Lloyd Halvorson of the National Grange.

STATEMENT OF LLOYD C. HALVORSON, ECONOMIST, THE NATIONAL GRANGE

Mr. HALVORSON. Mr. Chairman and members of the committee, I appreciate this opportunity to present the view of the Grange on this legislation.

I might say that I am not an expert on this whole automobile business, but the National Grange does have certain economic philosophies and stand for certain economic principles which I would like to speak to.

Now, I will file my statement, but I do have a few notes that I would like to speak from.

Mr. ROGERS. All right. We will accept the statement, and you speak from the few notes that you have.

(The prepared statement of Mr. Halvorson is as follows:)

STATEMENT OF LLOYD C. HALVORSON, ECONOMIST ON BEHALF OF THE NATIONAL GRANGE ON H. R. 11360 (AND S. 3879), AUTOMOBILE DISTRIBUTION

Mr. Chairman and members of the committee, the preservation of competition to protect the buyers of goods and services has long been an objective of the National Grange. We also believe in competition as a stimulator or progress which must be preserved if we are to continue to enjoy a rising level of living and an ever-growing national income.

We are dismayed by the growing propensity to want to use the powers of Government to suppress and subvert competition under the guise of antitrust or antimonopoly. If the reason is that small business cannot keep pace with the economic strides of big business, the answer certainly is not to so shackle the big business so that its pace is held down to the slower pace of small business. We should let economic efficiency be the arbiter in the determination of who and what form of business can serve the public best at the least cost if we want the maximum in economic progress.

We of the Grange are as opposed as ever to mergers and acquisition of assets by any form of business for the purpose of getting enough of the market in order to be able to monopolistically exploit the market. We are as opposed as ever to collusion. We shall support efforts to prevent price discrimination against small business. There is nothing more unfair to small business than to allow big business to cut its price only in select competitive areas. Small business must nearly always compete on the basis of its total costs of production and it would be unfair to allow big business to compete in select areas on the basis of only its out-of-pocket costs of production. Big business could, by cutting its price only in the territory of a small, efficient competitor, destroy him and thus deprive society of the progress that would have been available by virtue of his lower costs.

Originally the purpose of the antitrust legislation was to protect the consumers directly, but more and more antitrust legislation is being advocated to protect certain kinds of business firms on the theory that the consumers will indirectly benefit. To a certain degree this theory is valid. Legislation which put business growth and survival on the basis of economic efficiency is economically sound from the consumer's standpoint.

We must be very careful not to pass legislation in the name of anti-trust to help certain kinds of business at the expense of consumers. Consumers do not exist for the benefit of business, but business is justified by how well it serves the consumers. It is especially bad when those who seek aggrandizement at consumers' expense, want to employ methods that impair our economic system to preserve status quo, and thereby block progress.

We are, of course, mindful of the farm program and its implications to consumers. There are many differential effects from progress. Certain industries, like automobile production and distribution, enjoy an expansion in markets by a greater percentage than the growth in the national income, whereas the percentage of the national income spent for food goes down as the national income rises. The open research in agriculture has advanced technology, and thereby production, faster than the capacity of the American people to consume food. If an entirely appropriate function of Government to help our economy to accommodate progress by facilitating adjustment in those segments adversely affected by progress. It would be unsound to try to perpetually compensate those hurt by progress, either by use of taxpayer funds or by a grant of monopoly power that could be exploited in the market place. The farm program which we of the Grange advocate is designed to bring about agricultural adjustment on a sound basis, and not to interfere with progress or to grant a perpetual direct or indirect subsidy to farmers.

The whole concept of parity and flexible supports has been an appeal to the American people to prevent economic ruin and distress to the American farm people while they are undergoing an economic revolution to accommodate progress and adjust from war to peace. In the past 10 years we have seen the number of farms decline by about 1 million. We do not want to see agricultural adjustment brought about through the harsh and harmful route of bankruptcy but rather through the process of increasing the on-farm and off-farm income opportunities of farm people. In this I believe the American people agree with the American farmer.

If the automobile dealers wish to come before the American people and fully expose their economic status over the past 12 years, I feel confident that, if there

is similarity to the farm situation, the American people would be glad to help them also with something comparable to parity and flexible supports, with a cut-off when their economic health was restored to something between 75 and 90 percent of parity. Of course, the auto dealers might in that period be expected to make many adjustments, including the possible change of occupation for some of them. The resort to economic relief via the antitrust laws is something we must look at carefully.

We in agriculture recognize that it is entirely possible that depression and low income for any industry can be the result—at least in part—of monopoly, either on the buying or selling side. To the extent that such monopoly is the cause of an industry's woes, we believe that this should be the first thing to be corrected.

Farmers are face to face with gigantic corporations when they sell their products and also when they buy their farm machinery and supplies. If there should be monopolistic abuse either on the buying, or the selling side, we in agriculture would not ask for legislation to incorporate farmers into the monopoly nest in order that they may also share monopoly benefits at consumers' expense. We fear that the H. R. 11360 and S. 3879 bills would not get at any basic monopoly problem but, if anything, require by statute closer collaboration between automobile producers and distributors in maximizing returns for both. If auto production is heavily concentrated (and maybe the economics of scale make this desirable) this is no legitimate excuse for lifting automobile distribution above the rigors of competition, if no economics of scale or other benefits would result. In fact, this legislation could stifle attainment of full economics of large-scale distribution.

We are not in a position to say that automobile dealers do not need some kind of economic legislation. But before we could agree to economic legislation for automobile dealers, or any industry, we would want to know the extent of their profits and salaries for a 12-year period. Low profits as a percentage of sales is a poor guide in the first place, and especially if for only a 1 or 2 year period. Certainly, the American people should not be asked to reestablish for auto dealers the dream world they had after World War II and through the Korean conflict. This would be too costly and quite unjustified.

We should recognize that obsolescence is one of the normal risks of business which an entrepreneur assumes. It would be entirely unsound to try to stop progress to prevent obsolescence. A low rate of return in the auto dealer business might not be due to a monopoly squeeze, but rather due to the fact that some dealers have found new, better, quicker, and less costly methods of sales. It would be very unsound to seek to preserve obsolete values at the cost of progress which consumers have a right to enjoy. Any manufacturer should have the right to shift his method of sales as he finds best in his interest and the consumers' interest.

The distribution industry is undergoing a revolution. First was the grocery business, and some attempt was made to stop this revolution by law. We can be thankful this effort to thwart economic progress by law failed, because the result was a reduction in wholesale and retail margins for food by one-half, plus better products and better service on food. Second was the revolution in the appliance field and we still have laws in some States thwarting progress here. In the areas not cursed by fair-trade laws, margins have dropped from about 40 to about 5 or 10 percent. Fortunately, the people in the Washington, D. C., area can buy appliances at fantastic savings because of the absence of any legal barrier to progress in distribution. It may well be that the auto dealer business is also beginning to undergo a revolution. With most of the selling done by expert salesmen on television (or by your neighbor who succumbed first), the local dealer becomes mostly an order taker and authorized service station that a house of salesmanship, so margins need not be so large. To make manufacturers responsible for preserving obsolete investments of dealers would be the summit of economic folly and of questionable economic justice. If there is to be privatization of gains, there must be privatization of losses.

The reason for the general discussion above is to make clearer the reasons for the specific objections of the Grange to H. R. 11360 and S. 3879.

These bills give an auto dealer the right to bring suit against any automobile manufacturer who fails to act in good faith in dealing with him. The definition of "good faith" in S. 3879 is:

"The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents, to act in a fair, equitable, and nonarbitrary manner so as to guarantee such other party freedom from coercion, intimidation,

or threats or coercion or intimidation, so as to preserve all equities of such other party which are inherent in the nature of the relationship between such parties by such franchise."

This definition is very vague and could be stretched to a considerable length.

We have exactly the same reaction of this legislation as did Mr. Rogers of the Department of Justice, who wrote:

"This building for dealers, a sanctuary from the rigors of competition, seems at odds with basic principles of antitrust."

This expression by Mr. Rogers bears out the fears we of the Grange have had concerning recent trends in antitrust legislation or at least agitation.

The Senate Report on this legislation said:

"The economic facts underlying the relationship between manufacturer and dealers justify the imposition upon the factory of duties of a fiduciary or quasi-fiduciary character. * * * Under these circumstances it seems reasonable that the law should impose upon the dominant party, the manufacturer, duties of a fiduciary character."

As we see it, H. R. 11360 and S. 3879 may have the effect of using the powers of government to create a vested economic right by dealers in a voluntary contract with manufacturers. The next step might well be agitation by contract truckers to make their contracts with their shippers a statutory right. Not only that, the shippers would have to protect the "equities" of the contract carriers. Farmers would have reason also to insist that arrangements with milk handlers, for example, be made a statutory right, with the milk handlers being required to assume a quasi-fiduciary responsibility toward the farmers. The same could even be applied in the relationship of executive and workers toward the employer. The imposition of involuntary fiduciary obligations in private, voluntary contracts could be a very dangerous trend.

It can, of course, be argued that a franchised dealer system is something special, and with that we have to agree. The irony is, however, that where big business makes arrangements on a franchise basis with those with whom it deals, it is more generous than with the many others it buys from or sells through. We fear the dealers are trying to make a good thing even better by legally requiring auto manufacturers to "cooperate" a little so they can increase their profits on cars at consumers' expense. Competition is usually a fair arbiter of price and profits, and only in unusual circumstances in our economy would impairment of competition for someone's advantage be justified and accepted by consumers.

Automobile manufacturers under our form of government should certainly have the right to choose whatever method of selling cars that best serves their interest and the public's interest. If their dealers' contracts are voluntarily entered into for a year, the auto makers should have a right to cancel all of them at the end of the year and sell cars through used-car lots, or through direct agents, if they so desired. To create a perpetual vested right by statute in a voluntary contract to protect obsolete dealer interests at public expense in the name of antitrust legislation, is the height of economic folly. We hope that this legislation is not intended to this, but we cannot be sure.

We do not know what all might be involved in that part of the "good faith" definition, which says "so as to preserve all equities of such other party which are inherent in the nature of the relationship between such parties by such franchise," but we fear it could be used to force automobile manufacturers to reduce automobile production, by threat of damage suits, so as to maintain for dealers the margins or profits which they consider desirable. We agree with Mr. Rogers of the Justice Department that "the result might be artificially to re-create as a permanent condition in the retailing of automobiles postwar shortages and prices still fresh in the minds of many." If the court are to be arbiters of the rate of return on the low side, the public would soon demand that the courts act as arbiter of profits when cars are scarce. Soon we would have made a public utility out of our most typical American free-enterprise business.

It is quite possible that many of the old dealer facilities are going obsolete, and that automobile supermarkets, or methods akin to them, with only the sky overhead, and some nice landscaping, will sell more cars for much less than the old methods. Authorized service could become an entirely separate business. There is no reason why the auto makers should be required by law to operate in such a manner as to protect obsolete equities and obsolete methods by making consumers pay more for cars and at the expense of progress in methods of distribution.

It is difficult to see how coercion in the true sense is involved in the voluntary contracts between dealers and manufacturers. It is especially odd when the problem is presented as being most severe in those cases where a franchise is given which lifts the receiver a little above the competitive level. Would the automobile dealers like to have the auto manufacturers abolish franchises and allow any properly qualified retailer to sell cars? This legislation could lead to abolishment of franchised selling as manufacturers might not want to assume a fiduciary responsibility to distributors.

The coercion seems mostly to be a fear of loss of hoped-for gain, or unwillingness to assume the normal obligations that might come with an economic benefit. The dealer contract would not be entered into except for hope and prospect of gain.

If automobile dealers are at the mercy of the manufacturers, then certainly the farmers and other customers are too. If there is something wrong in the economic structure of the automobile manufacturing business, the answer is not to spread the influence by making the auto manufacturers the fiduciaries for the dealers' equities. It is not only dealers, blessed with franchises, who deal with big business, but many others as well, including farmers in particular, who both sell and buy from big business.

The bill makes no provisions for performance of good faith by the auto dealer with a customer. Many people remember how they deposited money with dealers after World War II on the understanding that they would get their cars in the same chronological order as the placing of their order and deposit. This "good faith" was often broken, to say the least. The auto manufacturers tried to curb the "grey marketeering."

We do not by this testimony hold that there are no legitimate problems in the dealer-manufacturer relationship. They probably are not unique, however, to franchised automobile dealers, except as they may have a special conferred benefit they especially do not want to lose. We are certain, however, that the method of helping dealers proposed in H. R. 11360 and S. 3879, is unsound.

Whatever legislation is adopted for automobile dealers is certain to spread to the farm implement business. We must be very vigilant that we are not saddled with legislation that will increase costs of automobiles, trucks, and tractors, by several hundred dollars each for years to come, by unsound interference with the free-enterprise system that generally serves as a fair arbiter of price and profit.

Mr. HALVORSON. First of all, I would like to explain the basic reasons why I am here.

Farmers have a tremendous investment in motor vehicles. In other words, they are big buyers of motor vehicles. The motor vehicle is very important to the farmer because he has to go to town to get his farm supplies, to supply his family; he has to go long distances for social events and to other activities and social institutions.

Farmers also have trucks. They buy a large number of trucks. I believe they own the larger proportion of the trucks in the country.

Farmers also buy tractors and farm equipment, and we feel that if this legislation is enacted for the automobile dealers, it will very quickly spread to tractors and farm equipment, and possibly a number of other businesses as well.

As I will point out later, we feel quite certain that this legislation will greatly increase the cost of automobiles, trucks, and farm equipment, if it is applied to farm equipment, as we think it sooner or later would be.

Also, as citizens, we are interested in preserving a free-enterprise system and sound equitable rules for our economy. We feel that the reason we have a good economy is that we have had good rules that have promoted prosperity and progress.

Also, I am here because I think that I can be helpful from the standpoint of our experience in agriculture with legislation to help a depressed industry. Agriculture has been hurt by the rapid advance

of technology in agriculture without a commensurate increase in demand. The capacity of the human stomach is limited.

Farmers also have had to deal with big business on both the buying and the selling side, and they have by no means enjoyed the paternal benefits of a franchise.

It seems to me that there are certain questions that should be answered fully before any kind of legislation of this kind is enacted. One question would be, are the economic conditions in the auto dealer business so bad as to justify legislation to improve the profits of the dealers? And we think that we should look not only at 1 year but for a 13-year or longer period, and certainly the figures that Mr. Hufstader just gave you convince us in the Grange that this is not a depressed industry that justifies any extreme legislation such as this, which will increase the cost to consumers and farmers who are not at all in a good financial condition.

I cannot help but refer to the figures that Senator Monroney gave here yesterday. He seemed to feel that dealers were in an economic plight because they were only getting 1.7 percent return on their sales. He compared that to the return on sales of manufacturers of about 17 percent. And I drew the implication, at least, that he meant 1.7 was not enough.

Well, I do not think that a seller of an article has any economic basis for expecting to get the same rate of return on sales as the manufacturer. Certainly there is a great deal more labor and capital involved in the production than in the selling of an item. I think that comparison has no significance, and I do not see how it could justify this legislation whatsoever.

Another question I think should be answered is this: Has the evidence of alleged abuse of dealers by manufacturers been specific, that is, pinpointed? Has it been sufficient and fairly heard?

It seems to me in the hearings, at the times that I have been here, the accusations have been rather general, and I would like to see, myself, actual cases of alleged abuse being brought before this committee and let the dealer explain where he thinks he has been abused and let the manufacturer defend his action.

Also, we must recognize that human nature is not perfect, that possibly automobile dealers do make mistakes, just as Government employees at times do not have conduct that is perfect. But I think that to show that there is need for legislation, we would have to show that the abuse was rampant and on a large scale justifying this extreme kind of legislation.

I would also, and I think that this committee should also ask before it acts on it, examples of how this proposed legislation would operate in business transactions. It seems to me that if this were done, possibly a lot of businessmen would be frightened, and Congressmen as well, as to the degree to which we are asking in this legislation to introduce Government in to private business contracts. It seems to me that under this kind of law, we might have the Government substituted for managerial decisions in such things as, one, how many cars should be produced. Senator Monroney mentioned that yesterday, that there were so many cars produced a year ago that possibly it was detrimental to the dealers.

Second, the Government might decide because of this provision, to preserve equities of dealers, to protect it, how many dealerships can be created.

Third, what selling practices are to be allowed.

Fourth, as to when a franchise is to be canceled or terminated. This afternoon there was a question raised as to whether or not the manufacturer had a right to require certain advertising compliance in the contracts.

I ask is an automobile manufacturer under this legislation justified in cancelling a franchise, for example, or in terminating a franchise if the dealer has not been satisfactory for the manufacturer for the reasons that Mr. Hufstader mentioned, for example.

It seems to me that that is a matter that should be left to private business decision and not transferred into the area of Government decision or into the courts.

What is meant by coercion and intimidation?

A franchised dealer is a grantee to it, the manufacturer the grantor.

It seems to me and to other laymen I believe in our organization that a grantor has the right to require anyone who is willing to take that franchise, that contract, certain things in return. It might be advertising, it might be to maintain a certain performance on level of sales, service to the customers and so on.

And it seems to me that this legislation will throw the whole decision as to whether or not it is proper to terminate a contract into the hands of the Government.

I should point out also that this question of fair treatment to two parties of a contract is not simply peculiar to the automobile business.

For example, you could take a farmer who is a tenant. He is certainly at the mercy of the landlord even to a greater extent in my opinion than the man who has a franchise from an automobile dealer.

The landlord can terminate the contract if he does not think he is a good enough farmer, or at any level he can terminate the contract if he thinks he voted for the wrong man in a political election, he can terminate it if he wants to let his relative run the farm or if he does not think that the tenant was docile enough.

It seems to me that if we are going to go this route, we are started on a dangerous route that will be expanded to other parts of the economy, without sufficient justification, and we will certainly be taking away a great deal of freedom.

Another good example is the contract trucker who buys equipment—I also should point out that today a tenant who loses a lease stands a very good chance of being out of business and possibly if he has a herd of cattle he has to liquidate it, sell his machinery and then he is out of a job.

He has got to go look for a job.

Take a contract trucker who has a contract to haul merchandise for a manufacturer. It seems to me that this question of coercion in both cases is how much does the grantor of a contract or a franchise, how much right does he have in demanding certain performance or certain things in return, and if a franchised dealer has a right to legislation for review as to good faith and renewal of contract and such other things, certainly the contractor trucker also has a right, because he is certainly at the mercy of the manufacturer.

And he has probably less alternative use for his equipment because the ICC has regulated the trucking industry to such an extent that he would be very lucky if he found any place to pick up new business.

I want to take a subtotal of my testimony here and say that from what I have seen I do not think nor does the Grange feel that the dealers have proved economic distress to such an extent that this legislation is needed, and we feel that the kind of remedy that they are asking is certainly not consistent with our free enterprise philosophy.

It seems to me that the dealers are asking for a kind of perpetual right to a franchise even at the normal termination of it.

Now I agree with some of the statements made here this afternoon. It is very commendable when General Motors and these manufacturers are willing to continue these contracts in families for a long time, but I still feel that if the grantor of a franchise does not want to establish family dynasties in dealerships, that they should have that right to terminate it, as it is their property rights you might say.

There is it seems to me a certain amount of irony in this thing when you consider the origin of this legislation and the effect on the consumer. The hearing arose out of a consideration of the concentration in the automobile industry.

Ordinarily we would have expected something to come out of it that would have been beneficial to consumers, that would have protected them.

But it seems to us that what happens was that the dealers were asking that the automobile producers, who are few in number and definitely have a lot of power, exercise their power, economic power, in such a way as to protect the equities of the dealers and by protecting the equities we do not know whether that means that dealers are to have a more prosperous period than they are having now or how prosperous.

Possibly as prosperous as they were in a period of scarcity after the war.

These will be things that will not be determined by competition which we think is quite a fair arbiter in most cases, but will be put into the courts.

We feel that sometimes economic progress can have adverse effects on the equities of dealers.

For example, if one dealer starts selling you might say in super-market fashion, it might hurt the equities of other dealers, and possibly they could say that the manufacturers are not acting in good faith in permitting such a practice because it was destroying the equities of the existing dealers.

We think that this legislation could be applied in such a way as to prevent that kind of progress which consumers are entitled to in the marketing process which we have enjoyed in the grocery business, which we have enjoyed in the appliance business, and I think it is spreading.

I think it should be allowed to spread in spite of the adverse effect that it might have on the equities of dealers who could, under this legislation, ask the manufacturers to stop that kind of a practice in order to preserve their equities.

That concludes my extemporaneous remarks.

Mr. ROGERS. Thank you so much, Mr. Halvorson.

We appreciate your coming and giving your statement and your further testimony.

Mr. McCulloch. I would like to ask Mr. Halvorson a question, Mr. Chairman, before he leaves.

Mr. Rogers. All right, go right ahead.

Mr. McCulloch. If a tenant farmer found himself in a position that automobile dealers have found themselves over the years, would this legislation logically apply to them as well?

Mr. Halvorson. Well, I would think that they would have the right to ask that it be applied to them, but I don't think that we of the farm community would feel that this is consistent with our economic philosophy.

Mr. McCulloch. Well, of course I was glad to have your reaction to that question. But if it be mandatory upon a manufacturer to renew a franchise or a contract with an automobile dealer or with a farm implement dealer or with a home appliance dealer or with an insurance agent, then it would be just as logical, would it not, to require a landlord, a farm owner to renew his lease with his tenant after this lease had expired?

Mr. Halvorson. That is exactly the way we feel about it; yes.

Mr. McCulloch. And Mr. Chairman, I would like to compliment the representative of the Grange for coming before us and speaking on behalf of the users.

The manufacturers have had topnotch representatives here and the dealers have had topnotch representatives, but we have had no one to represent the users or the consumers until the officials of the Grange testified.

I am glad you came.

Mr. Rogers. Thank you. We appreciate your testimony.

We have another witness, Admiral Bell, of the National Association of Automobile Dealers.

STATEMENT OF FREDERICK J. BELL, EXECUTIVE VICE PRESIDENT, ACCOMPANIED BY FREDERICK M. SUTTER, FIRST VICE PRESIDENT, AND ROWLAND KIRKS, LEGISLATIVE COUNSEL, NATIONAL ASSOCIATION OF AUTOMOBILE DEALERS OF AMERICA—Resumed

Mr. Bell. Mr. Chairman, I think you and your fellow members have been extremely patient. It is getting late. I have no prepared statement.

Mr. Rogers. I understand at the request of the chairman you are going to give a summarization?

Mr. Bell. That is correct, sir. I have some random—and they are random—notes, and with your permission, I should like to go ahead, and I hope you will interrupt me at any time you wish.

First off, I was interested in hearing the reading by the chairman at the outset of these hearings today of the telegram signed, I believe, by Mr. Tony Whan, in his capacity as chairman of the board of the National Sales Executives.

I am informed that when he is not acting as chairman of the board of the National Sales Executives the gentleman is a vice president of Pacific Outdoor Advertising in Los Angeles. And I am further informed that in 1955 that firm did \$100,000 worth of work for the

Ford Motor Co. And when I say that I mean to draw no inferences whatsoever. But I do think it is a matter of interest.

The point has been made several times during these hearings that if this bill were to be enacted, this bill as amended—and I might say that I think the amendatory language suggested by this committee has improved the bill—the point has been made that if this bill were to be enacted it might require the manufacturers to change the entire method of distribution, it would destroy production, the dealers would die off like flies—I mean, very dire things were predicted. I simply submit to you, sir, that if the automobile manufacturers felt now or at any time in the past that they could sell automobiles more economically to themselves by any other method than the one currently in use, I feel rather confident that they would have done that a long time ago.

As a matter of fact, many methods of selling automobiles were tried during this first half century of the growth of the industry, and they have been discarded one by one in favor of the current system of franchise dealers.

There has been some comment to the effect that the enactment of this bill would open the doors to requests from other industries or other groups for legislation to protect them and to insure them of good faith. The household appliance industry has been used repeatedly as an example.

The automobile dealer is a one-line merchant, with a one-purpose building, and selling one make of automobile, and he is required by the contract to provide extensive service facilities. And an average investment in brick and mortar for all the dealers in the country is \$118,000.

And may I point out to you that you don't take your family out on a Sunday afternoon in a 240-horsepower electric mixer and drive it over the highways.

Mr. McCULLOCH. Does the same reasoning you are giving apply to farm implements too?

Mr. BELL. I recall Senator Monroney the other day saying that this particular industry, and the abuses in this industry, had been the subject of an intensive and comprehensive study lasting a period of 18 months.

Mr. McCULLOCH. But what is the difference in the method of operation, and the pressures, coercions, and so on, in the farm implement field and this field?

Mr. BELL. Oh, a great many of our members sell farm implements, Congressman McCulloch, and we have heard no complaints from them about their treatment from the farm implement manufacturers. I don't say that it doesn't exist, but it has not come to our attention.

The point has been made that Congress might be asked to enact legislation that would define the rights of tenants and landlords and that sort of thing. I might say as a personal observation that there were many times during my 28 years of naval service when I would have welcomed protection for my family from the capricious conduct of landlords while I was at sea.

Mr. McCULLOCH. I would like to comment on that too, because during the war we had rent control, and at long last, and after much travail, it was finally brought to an end under the Eisenhower administration, and I think with the blessing of the most of the people

of the country who are exponents of free enterprise and who do not wish to have the Government regulating every activity of their lives—at least, that is my feeling, Admiral.

Mr. BELL. It is mine too. We share your view wholeheartedly. I entered the Navy in 1920, and I had a great many years of exposure to landlords before the war.

Now, I recall also that when Mr. Gossett was testifying he indicated, certainly to me, that he would prefer to have cases determined by a group of Ford officials rather than by a jury and a judge. And he turned the chairman's question at one time by saying that he, Mr. Gossett, had the same belief in the jury system as the chairman.

Unlike you gentlemen, I am not a lawyer, I am just a citizen. But I certainly hope that as a citizen you won't destroy my faith in the system of judge and jury. I would much prefer to pin my hopes on a jury and judge than on the whims of a manufacturer who has confessed repeatedly in hearings in the Senate to a lack of adequate interest in his relationships with his dealers, but who did not make that confession until he was brought face to face with the committees of the Congress.

I think you said the other day, Mr. McCulloch, something about an alcoholic dealer—perhaps that was Congressman Scott—who wouldn't leave the bottle alone, he acted in good faith, but he was just a plain drunk.

Senator Monroney on the floor of the Senate made a comparable analogy that we thought was apt when he said that a manufacturer who opposes this good faith, this day-in-court bill, is saying in effect, "I have taken the pledge, but I want to be perfectly free to go back on the bottle any time I like."

And as we see it, one of the purposes of this bill is to put the dealer and the manufacturer on the wagon, and keep them there, in the public interest.

I recall that a good many months ago an official of the Ford Motor Co. was quoted in *Automotive News* as having said in an address:

We cannot possibly write a contract which spells out the causes for cancellation, because if we did that we would be in court all the time.

Now, Mr. Gossett says that such a contract has been written, and yet he tells us now that if this bill is passed, a simple day in court, good-faith bill, prices will go up, production will go down, and the whole system of distribution must be modified.

Now, I have so high a regard for the intelligence of the Ford Motor Co.'s management that I am confident that they can find a way to live with their dealers in good faith, without producing those dire consequences that they have predicted.

You will recall that reference has been made to the Federal Trade Commission Report of 1939. And, in that, they recommended that the then present unfair practices be abated to the end that dealers have less restriction upon the management of their own enterprises, quota requirements, and shipments of cars, based upon mutual agreement, equitable liquidation in event of contract termination, contracts definite as to mutual rights and obligations, and so on. That is on page 1076 of the Federal Trade Commission report.

Now, it is interesting to us, and to the men whom I represent, that nothing was done to abate those abuses cited by the Federal Trade Commission, either by the Federal Trade Commission or by the De-

partment of Justice, or by the manufacturers, until they came to the Congress of the United States.

Mr. MALETZ. Admiral, may I ask you this question:

Assuming now that the Ford Motor Co. provides a new franchise agreement which is comparable to the General Motors agreement with its dealers, and that the other manufacturers provide similar franchise arrangements, would the National Automobile Dealers Association feel that the pending legislation is still necessary?

Mr. BELL. The answer is yes. But I would like to add this:

A comment as to trade associations was made a couple of hours ago, and I would like briefly to say that ours is an association which men belong to voluntarily, there is no punitive action that can be taken by us. I am merely the paid voice to express, wherever I am told to express, the views of the dealers through their elected directors.

They have told me, in spite of the fact that each manufacturer might today or tomorrow enact and put into effect a contract comparable to that of the General Motors Corp., which is a far different document than they had 90 days ago, even then they think that it is important, urgent, that the concept of good faith be guaranteed to them by Federal statute.

Mr. MALETZ. Now, the point has been made by Mr. Hufstader this afternoon, I think, that this bill, insofar as the General Motors dealers are concerned, would not provide any more relief than the present provisions of the franchise agreement, and I am referring specifically to the 5-year franchise agreement.

I wonder whether we might have your comments on that.

Mr. BELL. I am not at all sure that I gather what you are driving at.

Mr. MALETZ. Well, as I understand Mr. Hufstader's testimony, it is possible that the new General Motors 5-year franchise agreement obviates or eliminates virtually all grievances that the dealers have had in the past.

Would you comment on that phase of Mr. Hufstader's testimony?

Mr. BELL. I think it is a little bit too early for me to make any definitive comment on that, because the comment I would have on it would be in the nature of repeating the reactions of the General Motors dealers.

I will certainly say this, however:

That the very dramatic, sweeping changes, and the complete reversal indicated by General Motors since the Senate meeting early this year, and in November and December of 1955, have heightened the morale of General Motors dealers tremendously.

Mr. McCULLOCH. I would like to comment that that is a tremendous good that you and your association have done. It seems to me that in a representative Republic where we can accomplish the desired results without legislation, it is sensible and it is in the public interest to accomplish them that way.

That is one of the reasons why I was so anxious to get the vice president of General Motors on the record about a possibility of relapsing into old practices which have brought so many complaints from dealers of all kinds.

So I am sure you were taught, if you went to the Academy, that in the interests of economy of effort and men and money, you never should do useless things. So if you have accomplished the results which you desire, then all the better that we have no further legislation on the

books to cause us concern, because I am concerned about these other fields, and I am concerned about the new policy that might result from this legislation not only in your field but in many other fields as well.

Many times we embark upon a course hoping to do good—and I am sure that that is what you and your dealers are seeking to do—but we do not see the end of the road where we may be taken. And one thing alone—and I am sorry to repeat it so often—one thing alone is important to me, and that is the possibility of enforced extension or renewals of contracts or franchises or whatever you want to call them, and what that will do to the American competitive free enterprise system.

Mr. BELL. I think it would be a terrible thing, Congressman McCulloch, and if I or the men whom I represent felt that this legislation would result in some such thing, we would not be here. We do not think so.

Mr. McCULLOCH. There is some very substantial testimony from people far more accomplished than I am in the law, and in constitutional law, who have very grave feelings that this bill does just that.

I am fearful, Admiral, by using phrases which are very appealing to me and everyone else—such as “good faith” and “day in court”—that we oversimplify and lull ourselves, if you please, into a sense of security and into a sense of not realizing just what we are embarking upon.

Mr. BELL. Congressman, I would suggest in partial response to that that perhaps the most persuasive of the arguments advanced to which you may be referring were advanced by the spokesmen for the same company that called a meeting, merged two bills, one of which was still in subcommittee of the Senate, certainly confused the minds of many of the men who attended the meeting and sent them away convinced that any legislation, mind you, any legislation would destroy distribution, lower profits, increase problems, and so on.

Mr. McCULLOCH. Of course, I did not mean to imply that. That is an economic result that I am not qualified to gage.

Mr. BELL. May I say something else, sir, on that?

I just recounted these abuses that 17 years ago the FTC said should be abated. Now, we have heard about the 100 percent warranty. These are not particularly germane, but I think they point up some of the basic issues. That 100 percent warranty came only after 17 years and only after protracted hearings in the Senate.

We heard testimony in the Senate last fall and winter to the effect that no one knew what was meant by “phantom freight.” It was a ridiculous sort of term. And yet, freight adjustments were subsequently made by the manufacturers, and they said, with some degree of pride, which I shared, that now phantom freight had been virtually eliminated. We were told that the 1-year contract was the best of its kind by General Motors witnesses during those hearings, and yet, now, they state with pride, and I certainly share that pride, that they have the 5-year contract.

They said that the contract speaks for itself, and we said, “We agree with you, and we don’t like what it says.”

Mr. ROGERS. By that statement you still maintain that although General Motors or Ford or the others may have written new contracts, you anticipate in the future that unless the dealer has some redress

either in court or by some other method, in other words, unless Congress takes some action, the abuses of the past may creep up again, in short that Congress will be confronted with the problem again unless some law is passed at this time?

Mr. BELL. I most definitely do, sir.

Mr. ROGERS. And the new contracts do not eliminate all of these abuses?

Mr. BELL. Not all abuses, as welcome as the changes are.

Mr. ROGERS. And to give an example of some of the things that have happened since 1939—

Mr. BELL. That is correct, sir.

Mr. ROGERS. And the changes that have been brought about?

Mr. BELL. In the hearings over there, for example, we were told that the cancellation procedure of the General Motors Corp. was an impartial procedure. Although the dealer was not permitted to bring his lawyer; he was not allowed counsel; it was impartial. Now, they have an impartial procedure with Judge Coleman, for whom all of us who know him, have the highest regard and respect. But the decision is still made within the General Motors Corp. and not by a judge and a jury.

Mr. MALETZ. As I understood, Admiral—I may be wrong—but as I understood it, under the new General Motors 5-year franchise agreement, if the General Motors Corp. should cancel a dealer's franchise, the dealer has the choice of having the matter heard before the impartial umpire or go to court.

Mr. BELL. We would much prefer to hear those words from the Congress of the United States.

Mr. MALETZ. I see.

Mr. HARKINS. Admiral, one more question. Have the other automobile manufacturers comparable contracts and comparable procedures to General Motors?

Mr. BELL. I have not seen any revised contracts issued recently by the other manufacturers. We have been told, you and I, that Ford is preparing such a one. I have not yet seen it, and I have not seen one from the other manufacturers.

Mr. McCULLOCH. Might I ask this ultimate question?

Would you go so far, Admiral, as to say that every contract, franchise, or lease upon its expiration, where the person to whom it was granted, or the party thereto, felt aggrieved, should have a day in court in accordance with the provisions of this bill?

Mr. BELL. I certainly think it fair, Congressman McCulloch, to permit any American who feels that he is aggrieved to have the decision made ultimately by a judge and by a jury.

Mr. McCULLOCH. Even after a contract or a franchise or a lease has expired and it is a question of whether or not the contract or the lease or the franchise is to be renewed or extended?

Mr. BELL. You are getting me into deep legal water, and I am not a qualified navigator for that.

Mr. McCULLOCH. I did not mean to get you into deep legal water, and I will try to state it simply, although I know it is difficult for me to state the problem clearly—

Mr. BELL. No, sir; you express yourself very clearly.

Mr. McCULLOCH. But I will make it just as simple as this, Admiral.

You own a business building down on Main Street in Washington, D. C., and you lease me a business space there which has proven very profitable, for one reason or another. You leased it to me for 5 years. And as the five years is growing to a close, you decide that you do not want to extend that lease to me for another 5-year term or for any term whatsoever. Do you think that I should have the right to go into court and have a court and jury determine whether or not you have fairly exercised your proper right with respect to that store room?

Mr. BELL. I wonder, Congressman McCulloch, if that analogy can be used in this case.

To begin with, I have leased you some space.

Mr. McCULLOCH. Yes.

Mr. BELL. I have not required you to put up \$150,000 before I let you sign the lease.

Mr. McCULLOCH. Very definitely that is apropos. But I may have to put up shelves or marble staircases or certain plateglass windows. I can submit all of the terms and conditions and facts that apply to an automobile dealer. And I would like to know whether, you believe that at the expiration of a lease for a definite term, if you, being the owner of the property do not wish to lease it to me for any number of reasons, some of which may be arbitrary, that that issue not to extend the lease should be then determined by a judge and jury?

Mr. BELL. Do I understand, sir, that you feel that an automobile dealer should have a life expectancy of 5 years?

It was a year you know or it is 90 days in the case of some companies, but this man who is a small-business man individually in the aggregate—

Mr. McCULLOCH. I will go right along with you to try to give you a parallel case.

I am not doing this in an antagonistic manner.

Mr. BELL. I know.

Mr. McCULLOCH. I am doing it in a friendly manner because of the policy here proposed which is so fundamental and which is such a diversion from our tradition that I want to know where it is going to take us.

Now you go ahead.

Mr. BELL. All right, I am your landlord.

Mr. McCULLOCH. Yes.

Mr. BELL. And I have told you "Now Congressman McCulloch, you and I are partners in progress."

Mr. McCULLOCH. For 5 years you have told me that?

Mr. BELL. No; I do not think any man would invest what an automobile dealer does with a life expectancy of 5 years, sir. I have told you as your landlord "We want to be partners in progress for the rest of your natural life."

Mr. McCULLOCH. No; you have told me "You can have a lease for 5 years, Mr. McCulloch."

Mr. BELL. If you took it under those circumstances and if that is all I told you, but that is not the case in the automobile industry. I don't think that there is an intelligent American who would risk his saving or go out and borrow money on that sort of nonsense, 5 years.

Mr. McCULLOCH. I do not think the record shows there are any other commitments by the manufacturers beyond that which you are committing to me as the landlord when I go into a business building for 5 years.

Mr. BELL. With the chairman's permission, may Mr. Frederick M. Sutter, vice president of NADA and an automobile dealer, give his views to you on that?

Mr. ROGERS. Yes; go ahead.

Mr. SUTTER. Mr. Chairman and Congressman McCulloch, I am not pretending to answer your tenant and landlord case, I mean as an automobile dealer.

I fail completely to see the relevancy of it but that is beside the point. There is a very definite factor involved in this situation besides the mere cancellation.

Mr. McCULLOCH. Wait a minute, cancellation or termination by agreement?

Mr. SUTTER. Or the failure to renew.

Now if you will permit me I would like to make my point clear without having it twisted, sir. Or the failure to renew.

Now bear in mind that we have statements by all of the manufacturers that they expect when they sign up a dealer, they expect the relationship to be one of long and mutually prosperous relationships. They have said that from the beginning.

Now it is not the cancellation or the failure to renew that is nearly so serious as it is what it permits the manufacturer to do in the way of coercion.

You perhaps don't know that every manufacturer has a little file on a dealer in which he keeps everything imaginable, everything imaginable that he could possibly use against the dealer.

I mean you may know that but it is a matter of more or less common knowledge.

Mr. McCULLOCH. Use it against a dealer——

Br. BELL. Any time.

Mr. McCULLOCH. For the manufacturer's benefit alone or for their mutual benefit?

Mr. SUTTER. If the stuff that is in those files is used for the dealer's benefit it is news to me and I have been a dealer for 33 years.

Mr. McCULLOCH. Have many dealers failed in business where they have faithfully followed the advice and suggestions and business practices advocated by the manufacturer, especially one of the Big Three?

I want to get away from the other companies who have had a difficult time economically.

Mr. SUTTER. Congressman, I don't want you to think I am giving you personal opinion. I have served as chairman of the NADA relations committee for 3 years and so have seen a great many cases across the country.

My answer to your question is a very definite "Yes."

More dealers have failed faithfully following these manufacturers' suggestions than have ever failed without.

Mr. McCULLOCH. Since 1940?

Mr. SUTTER. Since 1940, sir.

I will point out to my certain knowledge an Oldsmobile dealer nearby in my hometown who failed in the last few months, and he was the golden-haired boy while he lasted because he sold about five times as many cars as he would normally be expected to sell, and when he went broke, he owed 10 months' rent and some other very unfortunate circumstances.

Mr. McCULLOCH. Did he follow the manufacturer's directives and advice and suggestions religiously?

Mr. SUTTER. As nearly as I can find out chapter and verse; yes, sir. What I am trying to point out is, sir, that the manufacturers quite rightfully are interested in one thing, and that is volume, and we like volume, too, because if you do not sell volume you don't make any money.

But there is such a thing as having a youngster that comes in preaching the factory doctrines tell only one part of it.

He gives you an idea of the more cars you make the more money you make.

I could show you figures on the fallacy of that but there is no use in wasting your time.

And unless a dealer is a pretty smart individual and can resist that sort of talk, he is headed for trouble, and the answer is I have seen dozens of dealers go broke for that reason alone, and they will continue to do so if this legislation is not passed, because you see my point.

For example, only in the last 2 or 3 months Ford and Chevrolet dealers have both told me that their travelers have said "Now look, we have got just one yardstick for you as a successful and satisfactory dealer to us and that is first place."

Now I submit to your commonsense that both Ford and Chevrolet dealers cannot be in first place at the same time.

Mr. McCULLOCH. Is that kind of approach essentially different than the approach in some other fields?

For instance, in the life insurance business I understand that the pressure was really put on life insurance agents, and unless they sold so many hundreds of thousands of dollars in a town of a certain size, that their agency was terminated and it would be given to someone possessing energy and enthusiasm and pleasant personality who would deliver the volume. Has not that been one of the main things which has given us this tremendous volume in America, which has resulted in producing more and more at a less and less cost to the consumer so that we have the highest standard of living of any nation in the world?

Mr. SUTTER. Most certainly I will buy the volume idea. So far as your comparison with an insurance agency, I know nothing about it. I have spent my entire life as an automobile dealer and as a factory employee.

Mr. McCULLOCH. Of course up here we do not close our eyes to everything except the one beam.

Mr. SUTTER. But at the moment, sir, we are confining ourselves to consideration of a bill that applies to the automobile industry based on some facts which came out in the hearing.

There is one other thing. I might ask you this.

Which is better for the economy of the country, to have 14 million cars sold in 2 years, 7 million apiece, or to sell 8 million in 1 year and 6 million the next and have 200,000 men out of work as we now have? My point is in the free competitive system—

Mr. McCULLOCH. Of course that is second guessing. This bill does not affect that at all in my opinion.

Mr. SUTTER. I beg your pardon, sir. It has a great deal to do with the question.

Mr. BELL. May I continue, sir?

I don't know why the question of profits came in for discussion by various witnesses.

We did not come here claiming that the automobile dealer is a pauper or a millionaire, but some figures have been given to you, as I understand it, that we cannot accept.

I have here before me the business service bulletin of the Department of Commerce, Small Business Administration, dated September 1954, and simply because profits have entered into this thing, and we had no intention of bringing them in, I must set the record straight.

In this Government document directed at the automobile dealer, the operating profit before taxes expressed as a percentage of total sales was as follows: 1950, 6.3 percent; 1951, 4.9 percent; 1952, 3.6 percent; 1953, 2.2 percent.

Now the remainder are based on our figures, and this was also based on our figures: 1954, six-tenths of 1 percent; 1955, 1.7 percent; the first 3 months of 1956, eight-tenths of 1 percent.

Mr. ROGERS. What else do you have there?

Mr. BELL. I also have here some charts that I did not intend to submit to this committee. They were drawn up for the use of Dr. Burns and the Cabinet Small Business Committee, but I should like to present them to you for whatever use the committee might wish to put them to, one showing General Motors net profit before taxes as a percentage of sales and all franchise dealers, not simply GM dealers.

One showing 41 retail businesses in the order of net earnings during the first 6 months of 1954 as published by the Accounting Corporation of America which shows new-car dealers 40 out of 41.

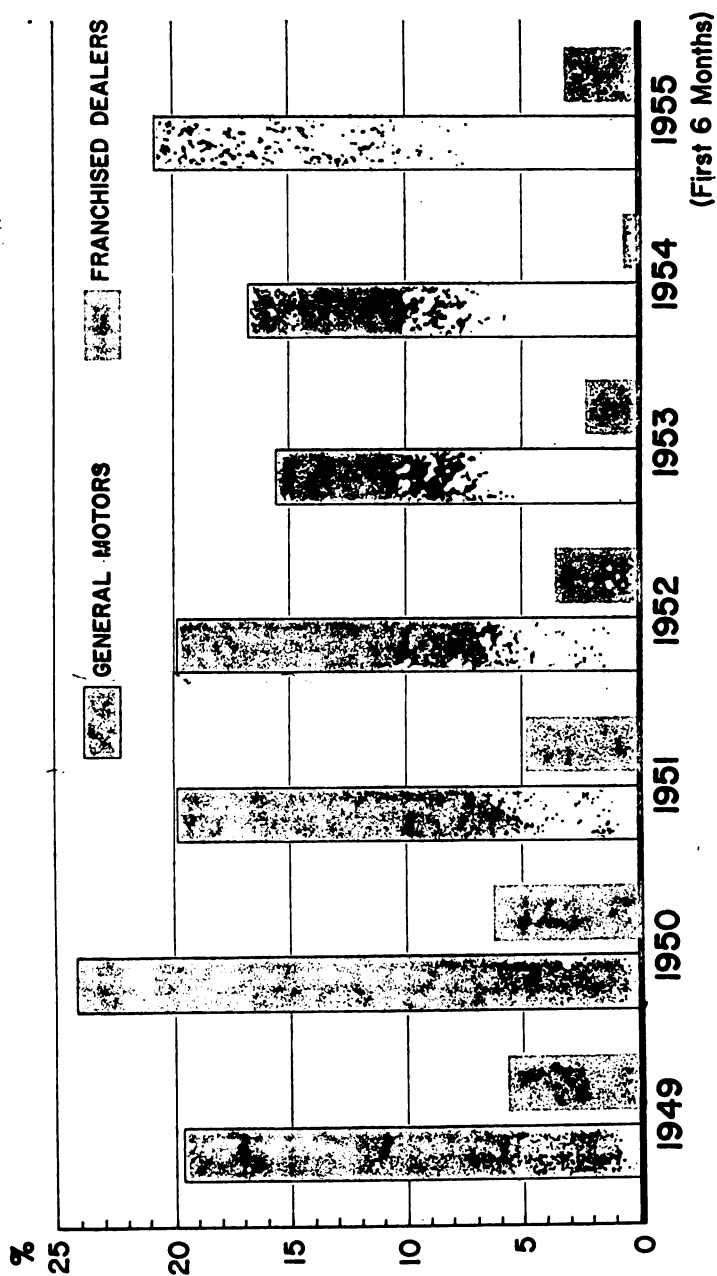
One showing the automobile dealer payrolls as a percent of total retail payrolls in each State.

One showing the franchised automobile dealer employment as a percentage of the total retail employment in each State, and if you would care to have those for the record, sir, why they are there.

Mr. ROGERS. Yes, we will accept those for the record.

(The charts referred to are as follows:)

GENERAL MOTORS vs. FRANCHISED DEALERS NET PROFIT BEFORE TAXES AS A PERCENT OF SALES



41 RETAIL BUSINESSES IN THE ORDER OF NET EARNINGS DURING FIRST 6 MONTHS OF 1954

(AS A PERCENT OF SALES)

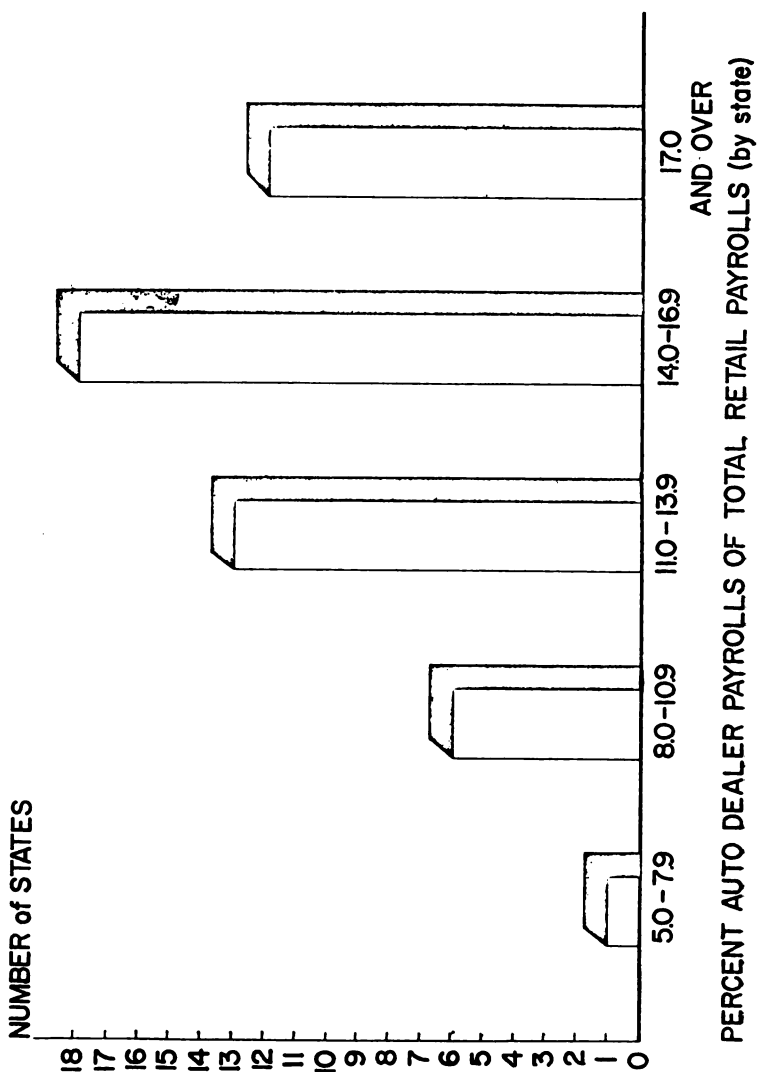
SOURCE: ACCOUNTING CORPORATION OF AMERICA

- | | |
|---|--------------------------------|
| 1. Dentists | 22. Cocktail Lounges |
| 2. Medical Doctors | 23. Men's Specialty |
| 3. Barber and Beauty Shops | 24. Bakeries |
| 4. Commercial Repair Services | 25. Women's Specialty Apparel |
| 5. Professions (not Dentists or M.D.s) | 26. Men's and Women's Apparel |
| 6. Photographic Studio and Supply Shops | 27. Furniture Stores |
| 7. Motels | 28. Drug Stores |
| 8. Jewelry Stores | 29. Hardware Stores |
| 9. Laundry and Cleaning Agencies | 30. Restaurants |
| 10. Florists | 31. Variety Stores |
| 11. Laundry and Cleaning Plants | 32. Liquor Stores |
| 12. Specialty Contractors | 33. Children's Wear |
| 13. Garages | 34. Confectionery Stores |
| 14. Gift and Novelty Shops | 35. Appliance Stores |
| 15. Paint, Glass and Wallpaper Stores | 36. Service Stations |
| 16. Plumbing and Heating Equipment | 37. Specialty Food Stores |
| 17. Lumber and Building Materials | 38. Meat Markets |
| 18. Shoe Stores | 39. Combination Grocery Stores |
| 19. Auto Parts and Accessories | |
| 20. Building Contractors | |
| 21. Taverns | |

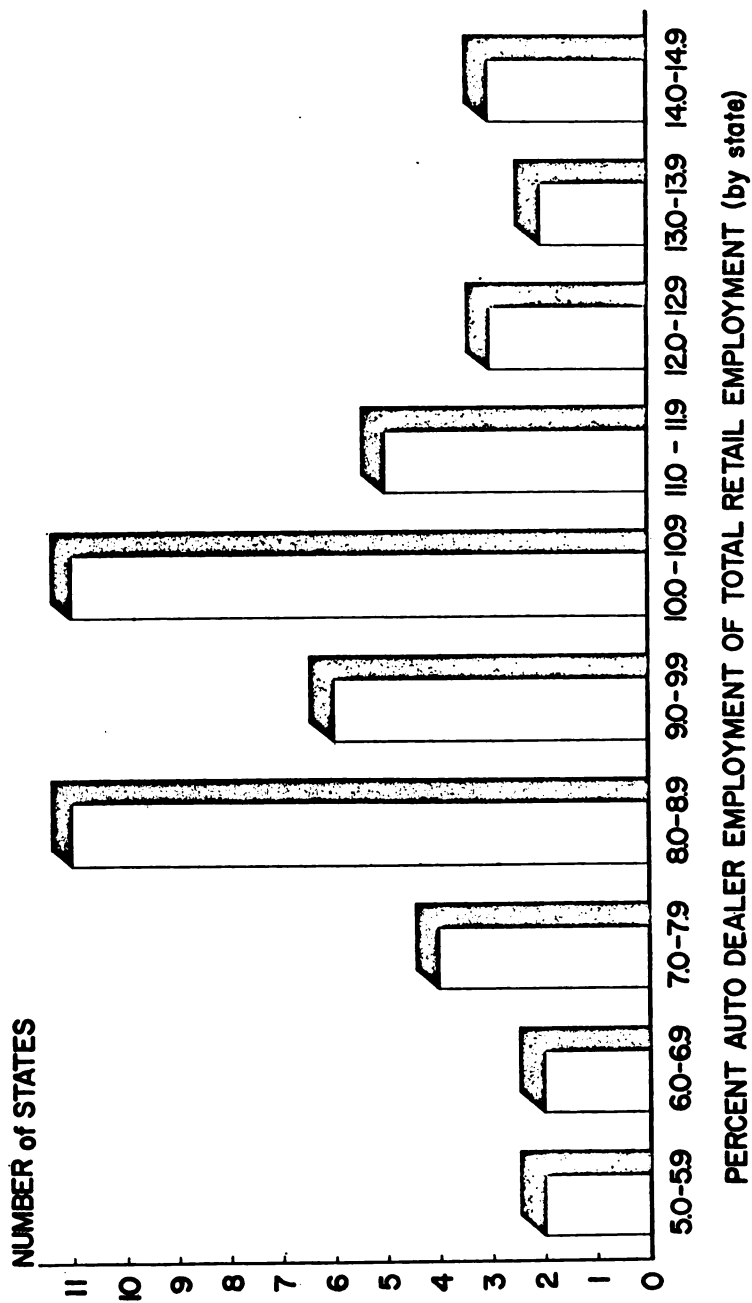
40. NEW CAR DEALERS

41. Used Car Dealers

FRANCHISED AUTOMOBILE DEALER PAYROLLS AS A PERCENT OF
TOTAL RETAIL PAYROLLS IN EACH STATE



**FRANCHISED AUTOMOBILE DEALER EMPLOYMENT AS A PERCENT OF
TOTAL RETAIL EMPLOYMENT IN EACH STATE**



Mr. MALETZ. I have one final question of Dr. Kirks.

Dr. Kirks, is there anything in this bill which precludes a manufacturer from failing to renew the franchise of a dealer?

Mr. KIRKS. I don't so interpret it.

Mr. BELL. May I close, sir?

Mr. Sutter has one comment in response to a question asked earlier by Mr. Keating, if he may get that in the record.

Mr. ROGERS. Proceed.

Mr. SUTTER. Mr. Chairman, yesterday, I believe it was, Mr. Bicks of the Justice Department gave some figures on profits as a percentage of return on capital.

There was a good deal of conversation about it, and Senator Monroney did not quite have the answer. I told Mr. Keating if he would like to have these in the record, we would be glad to submit them, and he wished we would do so.

In 1954 the figures of Mr. Bicks showed 9 percent after taxes as a return on capital. The figures that we have in our own files, based on reports on financial statements are 8.2 percent before taxes.

For 1955, the figures Mr. Bicks gave were 13.81 after taxes, and ours are 11.1 before taxes. There was some question in the minds of the Congressmen as to how that could be. The reason is that the figures we gave—our percentages are based on the amount of capital in the business, not on some theoretical figure.

You see, they have a method of figuring minimum required capital—

Mr. BELL. Minimum recommended capital.

Mr. SUTTER (continuing). Minimum recommended capital, both Ford and General Motors, I am told by dealers, have that method. So that the minimum recommended capital might be considerably less than the actual capital in the business.

So, quite obviously, the percentage return on that figure would be a great deal higher than on the actual return.

And that was the point that Mr. Keating said he would be glad to have cleared up.

Mr. BELL. I will close now, with your permission, with just two brief statements.

I want to emphasize this business of minimum recommended investment, because I recall on a trip to Dearborn some months ago there was a great disparity between figures published by Ford and the figures that we had received from the Ford members of NADA, and I was told:

"Well, of course, when we say 'investment,' we mean what we call 'minimum recommended investment.'"

And I still don't know what that means. I repeat, we were told that if this bill were enacted it would raise the prices of automobiles. That is sheer nonsense.

I point out to you, in the case of Ford automobiles, the price has consistently increased since 1951, without such a bill.

And I close now by saying that the overwhelming majority of the franchise dealers of America look to you and this committee with hopeful hearts. They do not share the apprehension of those who foresee these dire results if the parties to a contract in America's No. 1 industry are required to exercise mutual good faith.

They have asked me, through their elected directors, to most respectfully and earnestly urge the prompt reporting out and enactment of this bill, with the suggested amendments proposed in this committee. And I want to thank you again for your patience and your kindness.

Mr. ROGERS. Thank you.

This is the final witness, and this closes the hearings. I hope we act on the legislation soon.

(The article from the *Atlantic Monthly*, entitled "Nothing Down And A Trip To Bermuda," by Hartley Howe, previously referred to, is as follows:)

NOTHING DOWN AND A TRIP TO BERMUDA

By Hartley Howe

With the advent of the 1957 models only a few months distant, automobile dealers are once again scrambling to find customers for the remaining 1956 cars. New or used, the cars must be moved. Some of the inducements through which the dealer sets out to woo the buyer and at the same time protect his own margin of profit are analyzed in the article that follows. Hartley Howe has written extensively in the scientific field, and this is his first article to appear in the *Atlantic*.

1. Last September in Detroit, Chevrolet dealer Saul Rose felt that customers for his remaining 1955's expected something more exciting than just a plain brand-new automobile. As a bonus, therefore, he offered buyers a prospector's outfit, complete with Geiger counter, sleeping bag, hammer, ax, boots, compass, maps of likely areas, a booklet on how to stake a claim, and—in case the buyer failed to turn up any uranium of his own—100 shares of uranium stock.

Plump Detroiters, on the other hand, uninterested in the carefree life of a miner, may have preferred the proposition of one of Mr. Rose's rivals. He discounted Plymouths \$1 a pound for the weight of the buyer and his wife, raising the offer to \$1.50 a pound on Chryslers.

These were no isolated phenomena. For nearly a year the great American automobile industry has been hawking its wares with all the restraint and understatement of a runner for a Cairo rug merchant. Proclaiming abandonment of the profit motive, dealers have competed fiercely for customers. Some, for example, proposed vacation trips as *lagniappe* for coy buyers. Prospects in Denver, Colorado; and Portland, Oregon, were offered trips to Hawaii. Bostonians got their choice of vacations in Paris or Hollywood. A round trip to Bermuda for two was the bait for Cleveland Pontiac buyers.

Prospects with rainy days rather than sunshine on their minds have been offered bonuses in stock: three shares of Ford stock with each 1956 Mercury; uranium shares in Birmingham; Alcoa stock in Marysville, Tenn.; GM stock in Miami.

In Cleveland, buyers were tempted by an offer of two new cars for \$2,999 but they had to get there fast, for there were just two available at this price. Houston prospects were lured with an offer of 10 gallons of gas just for coming in to look, while in conservative Providence, R. I., this past February, Chevrolet buyers were offered a bonus of 1,000 gallons. In Los Angeles, items of optional equipment have been advertised for \$1 apiece. From New York to Portland, new cars have been offered for "10 cents down," "10 cents a day," or "at a one cent profit."

The most baffling proposition of all has been described by Frank H. Yarnall, past president of the National Automobile Dealers Association: buy a used car for \$595 cash, then turn it back to the dealer as down payment on a new car and drive away with \$1,105 "change" in cash.

The dealers haven't depended on advertising alone to bring in the customers. An Atlanta salesman stationed himself by a traffic light on a main boulevard. As cars halted for a red light, he'd stick his head in the nearest window and deliver his sales pitch. According to *Automotive News*: "A few of his 'captive' prospects were so annoyed at this approach that they complained to the Better Business Bureau. Before he was forced back in the showroom, however, he reportedly sold nine cars at the traffic light."

Nor do dealers limit their aggressiveness to their own prospects. It was also in Atlanta that a young man was discovered on a roof with a pair of binoculars, watching cars being appraised at a rival dealer's lot. The license numbers he

copied down were used by his employer to obtain the owners' names and addresses from the State license bureau. They were then telephoned and offered a better deal—which many of them readily accepted.

Known as "wheel and deal" or "blitz selling," these practices reached epidemic proportions in June 1955, after dealers had stocked up against an auto workers' strike that never came off. While the blitz reached a peak in early fall when dealers rushed to shed their remaining 1955's, it has continued grimly if somewhat less noisily to the present. The 1956 models have been discounted from the day of their arrival in the showrooms—an almost unheard-of phenomenon. Today some of the manufacturers themselves are advertising bonuses on a national scale. Where State insurance authorities permit, American Motors and Studebaker-Packard give a free accidental death insurance policy covering owner and spouse for the first year of ownership of their 1956 cars. Dodge started its 1956 model year with a nationwide lottery that anyone could enter merely by filling out an entry blank at a Dodge dealer's showroom, without obligation to buy: a new Dodge every year for the winner's lifetime.

2. The big auto sales blitz has been accompanied by a little blitz of complaints from buyers, who have found themselves the victims of as weird a collection of sales practices as were ever developed by the sharp horse traders of the David Harum era. Better business bureaus recorded last year alone more than 75,000 "public contacts"—complaints and inquiries—about new- and used-car advertising and selling practices. Public authorities have been similarly deluged. In Chicago, according to the Chicago Daily News, nearly 4,000 auto buyers filed complaints with the State attorney's office in 1955.

For on closer examination some alluring offers are far from alluring. In Columbus, Ohio, a man complained to the Better Business Bureau that his new car ran out of gas before he got home, after he answered an add offering 500 gallons of free gas with each car. The common "no downpayment" come-on often turns out to mean no downpayment only if the trade-in car equals the downpayment or if the customer signs a note for a supplementary loan—usually secured by a chattel mortgage on furniture or other possessions—equivalent to the downpayment.

Some "bargains" vanish entirely when a customer asks for them—they are just bait. Sometimes what sounds like a new car in the ad turns out to be second-hand. Other ads turn out to be ingenious combinations of one car's price, another car's picture, and a model name that may belong to either or neither.

In piling up this unenviable record, the unethical segment of the automobile dealers has enriched the American language. A rogue's dictionary of the trade includes some vivid cant:

The switch.—Advertising a notable bargain, then telling customers it has been sold and persuading them to switch to another car—and a less attractive deal.

Bushing.—Luring a buyer by offering a bargain price, then hiking the price. The original offer is made by a salesman "subject to the manager's approval." The manager later indignantly disclaims it and persuades the buyer, by this time emotionally committed, to accept the higher price. In some cases bushing is cruder—the buyer is given a price, persuaded to sign a blank sales agreement. Later he finds it has been filled in for much more than he expected to pay.

Lowball.—Sometimes the same as bushing—a low price given verbally, later repudiated—but also used to describe the practice of giving an unsophisticated customer much less than the going trade-in value of his car.

Highball.—A very high offer made verbally on a trade-in just to get the customer inside the salesroom, where he will be pressured to take less.

Would you take?—Cards are tucked under your windshield wiper in a parking lot asking "would you take" a fantastically high price for your car because the dealer "has a buyer." If the prospect goes around to try to collect, he gets the full highball treatment.

Unhorsing.—Lending a prospect a car while his own car is taken and held for sale in an allegedly rising used-car market. It turns out after a month or so that the market has inconveniently fallen and his car has been sold for considerably less than he expected—leaving the customer with no car and under obligation to the dealer.

The pack.—A simple method of luring buyers with nonexistent bargains. A group of dealers—sometimes only one—raise their list price for a new car by several hundred dollars. This permits all sorts of alleged bargain offers from "\$1 profits" to "double book value" trade-ins. In at least one case it recently enabled a dealer to offer customers more than they paid for their 1955 cars if they would trade them in on 1956 models. The pack is facilitated by the fact that

there is no real local list price; manufacturers' prices are quoted f. o. b., Detroit. This practice is sometimes called the top pack in contrast to a plain pack, in which various charges for mysterious accessories and services are packed onto the sales price.

The finance pack.—A maneuver to increase the profit on financing of car purchases. Here the dealer can sometimes recoup profits that have been squeezed out of a sale. Using a rate chart supplied by the finance company, the dealer can set the rates so high that he can sell the time contract to the finance company at a discount and still receive an extra profit for himself. This "commission" to the dealer is of course paid by the buyer in his installments to the finance company. Sometimes overcharges for insurance are included. Where these charges are lumped together into a single monthly payment, as they often are despite a Federal Trade Commission order that they be itemized, the buyer has no real way of knowing what he is paying for.

Ballooning.—Drawing up a time contract with low monthly payments except for the last installment, which in some cases is so big the buyer has to refinance his note.

3. The dealers themselves have become alarmed by the flood of complaints about these practices. The National Automobile Dealers Association, with the Association of Better Business Bureaus, has drawn up a code of recommended advertising and selling practices, which local dealers' associations are being urged to adopt. At the same time, however, even ethical dealers are inclined to blame the public itself for many sales abuses.

Looking out the showroom window, the dealer sees the average customer as a thoroughly unreliable character out to skin him of his last nickel or profit. Price and trade-in are this citizen's only concern: it is useless to tell him about car features or explain service facilities. This customer, say the dealers, traipses from showroom to showroom, telling salesmen highly imaginative stories of offers made at the last place and urging them to cut off another \$50. One New York dealer reports: "We can tell the minute a customer walks in if he's really interested in buying a car or just shopping around. I know one place where the salesman won't even answer a question about the car. He just says: 'Did you come in here to get an education or did you come in to buy a car?'"

Franchised dealers blame what they call "bootleggers" for turning the public into shoppers. The bootlegger is an independent dealer who quietly picks up his cars from overstocked franchised dealers. Even though he pays slightly more than wholesale for his cars, the independent dealer still sells them below list price—sometimes as "used: 200 miles" sometimes as new. He usually has no salesroom or elaborate sales organization, both required of regular dealers by the manufacturers. And, as his franchised rivals point out, the bootlegger is under no obligation to either manufacturer or customer to provide service facilities, keep a stock of spare parts, or build neighborhood good will.

On the other hand, the nonfranchised dealer will tell you that he succeeds simply because the normal markup on automobiles is so great that he can shave it and still make money. Both positions are basically true. The independent is the discount house of the automobile trade, he is subject to the same criticisms, and he flourishes—when he does—for the same reasons.

In recent months the so-called bootleggers have faded into the background. The reason is simple: the regular dealers have been cutting prices just as noisily. One dealer replied to a questionnaire sent out by a Senate subcommittee: "We live in a town that is 50 miles from a large city and the metropolitan newspapers are widely distributed in our city. The unethical and untrue advertising in these papers does more to affect our business than bootlegging."

For this situation the organized dealers put the blame on the factories. They charge that the manufacturer's desire for more and more sales and his determination to be Detroit's top banana result in the dealer's being so deluged with cars that he goes to extremes to get rid of them.

Last winter the National Automobile Dealers Association presented a stream of witnesses on dealer-manufacturer relations to subcommittees of the Senate Judiciary and Commerce Committees. While the dealers told only their side of the story, an aura of desperation hangs over much of their testimony even in cold print. A dealer's whole business career and often a large monetary investment in plant depend on his having a franchise from a manufacturer to sell a specific make of car.

In the auto industry, these franchises have been until very recently 1-year contracts—and the company has had the option not to renew if dissatisfied with the dealer. The manufacturer's view of the dealer's performance is based on

"penetration of the market"—selling the same proportion in his local market that his make sells in the national market. To achieve penetration, particularly in a low-income area, a dealer must really sweat it out. As a 54-year-old Pontiac dealer told a Senate subcommittee, describing how his manufacturer urged him to sell out to a younger man: "They liked young, lean men who could run faster."

Dealers claimed that manufacturers do not limit their pressures to sales but constantly tell the dealers how to run their business.

A persistent issue in the dealer testimony was "phantom freight": the practice of charging the dealer for the freight on his cars from Detroit even though they may have actually been shipped from some much closer plant. Another sore point was financing; dealers said they had to pay cash on the line—usually borrowed—for their cars when ordered, tying up their working capital while they waited for delivery. They complained also of having to take whatever cars the factory wanted to ship, rather than the kind the dealer wanted to buy. This usually meant higher-priced models, or cars so overloaded with accessories they did not appeal to budget-conscious customers. Other complaints involved the refusal of factories to pay for more than the basic cost (that is, without allowing a profit) of the service required to fulfill warranties.

Dealers also resented what they described as the compulsory purchase of heavy parts inventories, special shop tools that gather dust in their service departments, and advertising and promotional material unsuited for local use.

The consensus of the Commerce Committee witnesses was that the manufacturers had lost touch with their dealers. The manufacturers, however, and particularly President Curtice and other General Motors executives, presented a vigorous rebuttal. They pointed out that a very small percentage of GM dealers lose their franchises, and these for cause, such as failure to set up proper sales facilities or to seek customers aggressively. The complainants, GM implied, were dealers who had waxed fat during the early postwar years, when cars sold themselves, and now lacked the stamina for competition. In this connection, President Curtice gave some interesting figures on GM dealers' profits.

The rate of return on net worth, he testified, was 27.6 percent in 1940, 87.2 percent in 1946 (first postwar year), and climbed to 97.5 percent in 1947. From this high it drifted slowly down again to 24.6 percent in 1951, and 9 percent after taxes in 1954. At the same time Mr. Curtice pointed out that net worth of the dealers increased from \$249 million in 1940 to \$2,200 million currently, so that these percentages in recent years were figured on a much higher net worth base. Mr. Curtice estimated GM leaders' profits for the first 9 months of 1955 at \$414 million. In addition, the dealers pay themselves a large amount in personal salaries and bonuses. And he pointed out that General Motors had a waiting list of nearly 5,000 applications for dealer franchises—almost a third of the 17,000 GM dealerships in existence.

But if the manufacturers made few verbal concessions, they have nevertheless moved swiftly to mollify their dealers—and in part, also, to head off proposed Federal legislation outlawing some of the disputed practices and regulating dealer-manufacturer relationships. General Motors dealers are now being offered a choice of 5-year and 1-year franchises, both terminable only for cause. Clauses interfering with dealers' outside activities are being abandoned. All of the Big Three have sharply modified "phantom freight" charges, although simultaneously raising wholesale prices at many points to compensate.

Other concessions have been made on such matters as payment for warranty service and requirements for parts inventory. General Motors has appointed a vice president in charge of dealer relations, and has set up an impartial umpire in place of its dealer relations board. GM is also increasing its share of the cost of dealer-factory cooperative advertising, and has written a clause providing for maintenance of high ethical standards in local dealer advertising. Ford has cut auto prices to dealers, and established rebates and lower advertising charges. In April, Ford announced a series of dealer conferences to fight bootlegging (while at the same time opposing a proposed Federal act against bootlegging). In addition, the Ford Co. has set up a dealer-relations board, offered optional 5-year contracts to dealers, and agreed to bill dealers for new cars on arrival in the showroom. Chrysler has agreed to take over the rent on a dealer's property when a franchise is canceled, and has given dealers permission to will their franchises to their sons and sons-in-law.

Most important of all in easing dealer tension, the manufacturers have cut back production and reduced the flood of shipments to the franchised outlets. Actually this has been necessary: sales have fallen, and even with a 20 percent production

drop dealer inventories remained at record levels in the first months of 1956. According to President Bell of the Automobile Dealers Association, the dealers' average profit per car sold in the first quarter of 1956 was \$40, compared with an average profit of \$141 per car for the first quarter of 1955. At mid-May, there were reportedly nearly 150,000 auto workers jobless.

Whether improved dealer-manufacturer relations will in turn mean fewer unethical sales practices remains to be seen. The amount of push the dealers themselves put behind their advertising and selling code will probably tell the story. Similar programs carried out in cooperation with better business bureaus have been helpful in other areas of retailing, but nothing can be done unless local dealers' organizations are willing to move.

In some places, where auto dealers are licensed by the State or there are laws against false advertising, unethical dealers are being suspended or prosecuted. In Massachusetts two indictments have been returned for misleading "bait" advertising. Everywhere local better business bureaus are waging a valiant war, and in Chicago they have succeeded in winning published retractions from some dealers with pledges not to repeat the dishonest advertising.

Better enforcement of State and local statutes on misleading advertising would help. So would better policing by newspapers and TV and radio stations of the advertising they carry. The development of a more sophisticated—and somewhat less greedy—buying public is certainly important. And the reduction of factory pressure on the dealers to sell at any cost should improve things.

There remains, however, the broader economic question that underlies the whole chaotic auto-sales situation. How can lower auto distribution costs be achieved without destroying the dealer as an ethical independent businessman? High sales and low unit prices are a fundamental American economic tenet—can the present distribution system supply them? Or does the future lie in some sort of auto supermarket, where all makes of cars are sold with a minimum of sales and service force? This pattern dominates the grocery business and has become extremely important in appliance retailing: can it succeed where the product is as costly—and mechanically complicated—as the automobile?

Mr. ROGERS. The subcommittee received communications from the various individuals and companies taking a position with regard to H. R. 11360 and S. 3879. These communications are in the files of the subcommittee. The position taken in these communications are as follows:

PROPOSERS OF H. R. 11360 AND S. 3879

Tom Abbot, Jr., Frontier Pontiac, Inc., Fort Worth, Tex.
 Sam Adair, Madison, Ga.
 Leo Aricy, general manager, Minnesota Automobile Dealers Association
 L. L. Austin, executive vice president, Georgia Automobile Dealers Association
 A. J. Bither, president, Universal Car & Service Co., Grand Rapids, Mich.
 Lester C. Boylan, Kalamazoo, Mich.
 Tom J. Brooks, manager, Texas Automotive Dealers Association
 J. B. Buchanan Motor Co., Winchester, Tenn.
 Glenn Burdick, North Syracuse, N. Y.
 George J. Burger, vice president, National Federation of Independent Business, Wash., D. C.
 Roy O. Burnett, Jr., president, Automobile Dealers Association, Portland, Oreg.
 Hicksley Cheek, President, Cumberland Motor Co., Nashville, Tenn.
 H. A. Crouch Jr., Crouch Motor Co., Tullahoma, Tenn.
 Frank E. Davidson, president; Frank R. Broadway, executive vice president, Automobile Dealers Association of Alabama.
 Frank De Martino, Gaston Motor Sales, Easton, Pa.
 Charles E. Eastman, Stamford, Conn.
 John J. Evers, Jr., New York State Automobile Dealers, Inc.
 George Fischer, president, Muskegon Automobile Dealers Association, Muskegon, Mich.
 Samuel S. Giles, Giles Chevrolet, Port Jefferson, N. Y.
 Otto P. Graff, Flint, Mich.
 Gilbert L. Haley, executive vice president, Michigan Automobile Dealers Association
 Leslie T. Haskins, Wellesley, Mass.
 Walter E. Heingartner, president, Kinney Motors, Inc., Brooklyn, N. Y.
 A. C. Hine, Hartford, Conn.

Don Holahan, Flint, Mich.
Bob Holmes, Battle Creek, Mich.
David N. Holmes, Michigan director, National Automobile Dealers Association
Michael Ingrao, president, Danbury Auto Sales, Inc., Danbury, Conn.
Charles Franklin Johnson, Jr., Mobile, Ala.
Darrell Johnson, Thomson, Ga.
Claude S. Glugh, general manager, Pennsylvania Automotive Association
Carl R. Lane, executive vice president, Connecticut Automotive Trades Association, Inc.
Stan Lassen, Battle Creek, Mich.
Irwin A. Leoppke, secretary treasurer, New Car Dealers Association, South Sacramento, Calif.
Irving A. Levine, Woodmere, N. Y.
C. P. Leyda, Richland Center, Wis.
A. H. Lightfoot, Texas Motors, Fort Worth, Tex.
Harold Lindahl, president, Iron County Dealers Association, Iron River, Mich.
Carl A. Logan, Logan Chevrolet Co., Walla Walla, Wash.
Russell E. Lowell, president, Russell E. Lowell, Inc., Queens Village, N. Y.
William E. Mason, president, Mason Motors, Inc., Stamford, Conn.
James Mayo, Nashua, N. H.
A. J. McCarville, president, Signal Motors, Inc., Rockville Centre, N. Y.
J. K. McDonald, president, Augusta Auto Dealers, Augusta, Ga.
R. K. McMillan, J. M. Chevrolet Co., Brewton, Ala.
Ben Miller, Levittown Dodge Co., Levittown, N. Y.
Sperry W. Miner, president, New York State Automobile Dealers, Inc.
Bill Mitchell, Massachusetts National Automobile Dealers Association
D. C. Moore, president, Oregon Automobile Dealers Association
Andrew M. Nicoll, president, New Hampshire Automobile Dealers Association
Fred Noble, Noble Motors, Stamford, Conn.
A. J. Noll, Chevy-Buick-Oldsmobile, Moberly, Mo.
J. C. Oberwager, J. C. Oberwager, Inc., Brooklyn, N. Y.
R. L. Parnell, president, Tennessee Automotive Association
William A. Plunkett, executive vice president, Massachusetts State Automobile Dealers Association, Inc.
A. L. Puckett, McMinnville, Tenn.
Dick Price, Wichita, Kansas
George C. Reinoehl, Philadelphia, Pa.
Ralph Roddy and H. W. Douglas, Winchester Motor Co., Winchester, Tenn.
Les Sander, executive vice president, Illinois Automotive Trade Association
Walter Schlapp, Pontiac Master Auto Service, Augusta, Ga.
Elson G. Sims, Vincennes, Indiana
Elias J. Strong, executive vice president, Utah Automobile Dealers Association
Roy Tunt, secretary, Oklahoma Automobile Dealers Association
Charles E. Taylor, secretary and treasurer, Taylor O'Brien Corp., Buffalo, N. Y.
Henry Taylor, Moberly, Mo.
Hayse Tucker, Colorado Springs, Colo.
Glenen King Vars, president, Vars Buick Corp., Great Neck, N. Y.
H. P. Vermilye, Vermilye Motor Co., Tigard, Ore.
David P. Whelchel, executive vice president, Tennessee Automotive Association
James C. Wolfard, Wolfard Ford Motor Co., Portland, Ore.
Fred Woolverton, president, Downtown Oldsmobile Co., Jacksonville, Fla.
Arizona Automobile Dealers Association
Art Motors, Inc., Brooklyn, N. Y.
W. R. Austin Chevrolet Co., South Norwalk, Conn.
Automobile Dealers, State of Illinois
Automobile Sales Co., Memphis, Tenn.
Barnes Motors, Inc., Mobile, Ala.
Chip Barwick Chevrolet Co., Memphis, Tenn.
Bayer Cadillac Oldsmobile, Inc., Long Island City, N. Y.
Joe Bullards Oldsmobile, Inc., Mobile, Ala.
Charles Buick, Inc., Danbury, Conn.
Colvin and Tilbury, McMinnville, Ore.
Corbitt Motor Co., Memphis, Tenn.
Donthit-Sanchez, Inc., Memphis, Tenn.
William J. Doyle, Inc., Geneva, N. Y.
Dwinnell Motors, Ephrata, Wash.
Eastham Chevrolet Co., Ephrata, Wash.
Ephrata Truck & Implement Co., Inc., Ephrata, Wash.

Fennel-Chrysler-Plymouth, Moberly, Mo.
 John T. Fisher Co., Memphis, Tenn.
 Garland Coyle Motor Co., Walla Walla, Wash.
 Gilmore Motors, Memphis, Tenn.
 Phil Gordon Motor Sales, Traverse City, Mich.
 Haff Motor Sales, Inc., Seaford, N. Y.
 Hamilton Bros., Inc., Port Jervis, N. Y.
 Harrison & Gulley, Inc., Augusta, Ga.
 Hathaway Motor Co., Muskegon, Mich.
 Hayden Automobile Co., Stamford, Conn.
 Healey Buick Co., Stamford, Conn.
 Hert Nash, Moberly, Mo.
 Hoehn Chevrolet Co., Memphis, Tenn.
 Huber Pontiac, Moberly, Mo.
 Chuck Hutton Co., Memphis, Tenn.
 Illinois Automotive Trade Association
 Johnson Motors, Ephrata, Wash.
 Karl Brothers, Inc., New Canaan, Conn.
 Lazzari Motors, Monongahela, Pa.
 Lincolnton Motor Co., Lincolnton, Ga.
 Learn McCartney Buick, Inc., Ephrata, Wash.
 McDonald Motors, Inc., Eau Claire, Wis.
 McIntyre Motor Co., Inc., Ephrata, Wash.
 Magee Motor Sales, Fremont, Mich.
 Miller Ford, Moberly, Mo.
 Miller Motors, Fremont, Mich.
 Dick Moore, Inc., Memphis, Tenn.
 Board of Directors, New Hampshire Automobile Dealers Association
 Bruce Parker Buick, Inc., Waltham, Mass.
 Pryor Oldsmobile Co., Memphis, Tenn.
 Charles Reed Buick Co., Memphis, Tenn.
 Russell Reeves Co., Memphis, Tenn.
 Riebel Desoto Plymouth, Moberly, Mo.
 St. Clair Madison Automotive Association
 Sanders Mercury, Moberly, Mo.
 Schneider-Trotte Corp., Hempstead, N. Y.
 Southern Motors, Memphis, Tenn.
 Jerry Swanson, Inc., Fort Wayne, Ind.
 Teague Motor Company, Walla Walla, Wash.
 Trail Cadillac Pontiac Inc., Mobile, Ala.
 Union Chevrolet Co., Memphis, Tenn.
 D. A. Urquhart Chevrolet Co., Prichard, Ala.
 Vee Motor Sales, Inc., Middleton, N. Y.
 John Wellford Co., Memphis, Tenn.
 West Brothers, Plymouth, Mich.
 Wolf-Good Studebaker, Moberly, Mo.

OPPONENTS OF H. R. 11360 AND S. 3879

Les Arkenberg, Los Angeles, Calif.
 D. A. Ashcraft, Los Angeles, Calif.
 Ross A. Backus, Owosso, Mich.
 Les Bacon, Hermosa Beach, Calif.
 Ben Barclay, Los Angeles, Calif.
 Dick Barclay, Los Angeles, Calif.
 John Beber, Los Angeles, Calif.
 William Behrens, Los Angeles, Calif.
 L. E. Belknap, Los Angeles, Calif.
 L. E. Bell, Denver, Colo.
 Charlie Bennett, Seminole, Tex.
 N. R. Bernard, Los Angeles, Calif.
 Harry Biszantz, Los Angeles, Calif.
 Leon Blakely, Atlanta, Tex.
 Lewis Boggus, Jr., Corpus Christi, Tex.
 E. Robert Breech, Jr., Los Angeles, Calif.
 O. E. Brittain, Frederick, Okla.
 Maurice Buerge, Los Angeles, Calif.
 J. W. Burch, Los Angeles, Calif.

Mel M. Burns, Los Angeles, Calif.
 Robert Burns, Los Angeles, Calif.
 Lyle Byer, Berkeley, Calif.
 J. C. Blancett, Jr., Hardinsburgh, Ky.
 Don Caustin, Los Angeles, Calif.
 Ed Chaffee, Los Angeles, Calif.
 Chief Chamberlain, Los Angeles, Calif.
 Gene Chamberlain, Richmond, Mich.
 Glen Coffey, Los Angeles, Calif.
 Bob Cooke, Arlington, Tex.
 Thurston Cooke, Louisville, Ky.
 Mitchell Cooper, Los Angeles, Calif.
 Hoyt Curtis, Los Angeles, Calif.
 Earl Dahlberg, Minneapolis, Minn.
 Dick Danner, Ft. Worth, Tex.
 R. W. Davis, Los Angeles, Calif.
 Bob Davidson, Los Angeles, Calif.
 Hull Dobbs, Memphis, Tenn.
 John Dore, Los Angeles, Calif.
 Mark Downing, Los Angeles, Calif.
 George Dunton, Los Angeles, Calif.
 John H. Eagal, Sr., Stockton, Calif.
 Jesse Ellico, Los Angeles, Calif.
 Al Engilman, Los Angeles, Calif.
 Ira Escobar, Los Angeles, Calif.
 Warren Escobar, Los Angeles, Calif.
 George Evans, Dallas, Tex.
 Roy C. Ford, Corning, Calif.
 Bill Fortner, Los Angeles, Calif.
 George Fortner, Los Angeles, Calif.
 Bill Froelich, Los Angeles, Calif.
 Frank Galpin, Los Angeles, Calif.
 Ralph Gra, Los Angeles, Calif.
 Ben Griffin, Dallas, Tex.
 Dave Grubbs, Los Angeles, Calif.
 Walter C. Hansel, Vacaville, Calif.
 Carl Hansen, Los Angeles, Calif.
 Fred Hauter, Los Angeles, Calif.
 Austin Hemphill, San Antonio, Tex.
 Jerry Herfurth, Los Angeles, Calif.
 Charlie Hilliare, Ft. Worth, Tex.
 Ted P. Holcomb, Duncan, Okla.
 Perry Holden, Los Angeles, Calif.
 Earl J. Hoxie, Folsom, Calif.
 Corson W. Ide, Los Angeles, Calif.
 Leland Johnson, Los Angeles, Calif.
 Phil Johnson, Los Angeles, Calif.
 Fred Jones, Wichita Falls, Tex.
 Buster Kelley, Los Angeles, Calif.
 Paul M. Kernnen, Ithaca, Mich.
 A. E. Klemmedson, Los Angeles, Calif.
 Kark Kott, Los Angeles, Calif.
 DeForest Lawrence, Los Angeles, Calif.
 E. R. Lindt, Los Angeles, Calif.
 Harlan Loud, Los Angeles, Calif.
 Dick Maitlen, Los Angeles, Calif.
 S. L. Marshall, Cleveland, Ohio
 Ben McAdams, Weatherford, Tex.
 E. R. McCoy, Los Angeles, Calif.
 G. E. McKay, Los Angeles, Calif.
 Freeman MacKenzie, Jr., Los Angeles, Calif.
 Vel Miletick, Los Angeles, Calif.
 Bud Miller, Los Angeles, Calif.
 Arlee Mills, Los Angeles, Calif.
 W. D. Mills, Morrison, Ill.
 Eli Morgan, Electra, Tex.
 C. H. Myers, Los Angeles, Calif.

Curtis Norman, Brady Tex.
George Nutil, Los Angeles, Calif.
Mr. Omeara, Jr., East Hartford, Conn.
Roy Pierce, Los Angeles, Calif.
J. Portis, Lepanto, Ark.
J. R. Power, Williams, Va.
Frank Pretzlik, Los Angeles, Calif.
Lyle Puckett, Los Angeles, Calif.
Bill Pugh, Guthrie, Okla.
Stockton Quincy, Los Angeles, Calif.
Theodore Robbins, Los Angeles, Calif.
Ken Roggy, Los Angeles, Calif.
Ross E. Silvey, Okmulgee, Okla.
Charles P. Smith, Jr., Burlington, Vt.
Harry W. Smith, Jr., Norwich, N. Y.
Robert Smith, Los Angeles, Calif.
Charles Soderstrom, Los Angeles, Calif.
Tom Stamp, Los Angeles, Calif.
Kurt Stommel, Los Angeles, Calif.
George Sullivan, Willows, Calif.
George M. Sutton, Jr., Los Angeles, Calif.
Tyre Taylor, Southern States Industrial Council, Nashville, Tenn.
Grady Terrill, Lovelland, Tex.
David Tope, Los Angeles
Herb Tousley, St. Paul, Minn.
Bill Utter, Denton, Tex.
Carlton Walker, Los Angeles, Calif.
Fred Warnock, Homestead, Fla.
John Weld, Los Angeles, Calif.
Wallace Weldman, Los Angeles, Calif.
Louis C. Wertz, Center, Colo.
Roy White, Los Angeles, Calif.
James A. Whitworth, Niagara Falls, N. Y.
Fred Williams, Jr., Indianapolis, Ind.
Jake Witzel, Lawton, Okla.
J. H. Wray, Los Angeles, Calif.
Fred Yerger, Los Angeles, Calif.
Dick Yerkey, Zeeland, Mich.
John Young, Kilgore, Tex.
Murray Young, Midland, Tex.
Adams Garage, Hanover, Ill.
Arnold-Offutt Ford Inc., Vero Beach, Fla.
Arrowhead Garage, Two Harbors, Minn.
Ballas Ford Sales, Inc., DeKalb, Ill.
Bankston Motors, Garland, Tex.
Bartow Ford Co., Bartow, Fla.
Barwick Chevrolet Co., Wynn, Ark.
Chip Barwick Chevrolet Co., Memphis, Tenn.
Baumann Motors, Vista, Calif.
Benna's Garage, Two Harbors, Minn.
Berry Motors, Inc., San Francisco, Calif.
Bird-Kultgen, Waco, Tex.
Blackshear Sales Co., Blackshear, Ga.
Bland Chevrolet Co., Earle, Ark.
Bodiford Motor Co., Weatherford, Tex.
R. R. Bowlin Allen Country Motors, Ft. Wayne, Ind.
Box Ford Co., Corinth, Miss.
Boyd-Tarrant, Temple, Tex.
Boyle Motor Co., Tampa, Fla.
Bradenton Motor Co., Bradenton, Fla.
Brash-Hoffman Motor Co., Apalachicola, Fla.
Brewster Motor Co., Lupton, Colo.
Brooks Motor Sales, Portsmouth, N. H.
Burton Motors, Inc., Sacramento, Calif.
Casa Linda Ford, Dallas, Tex.
Childs Daniels Co., Winterhaven, Fla.
Cirimele Ford Sales, Oakland, Calif.
Clarksdale Ford Co., Clarksdale, Miss.

J. E. Coberly, Inc., Los Angeles, Calif.
 Continental Investment Corp., Memphis, Tenn.
 Cooper Motor Co., Marietta, Ga.
 Corbitt Lincoln Mercury Co., Memphis, Tenn.
 Creel Ford Co., Defuniak Springs, Fla.
 Cunningham Motor Co., Long Prairie, Minn.
 Davis Co., Ithaca, Mich.
 Davis Shirley Ford Co., Meade, Fla.
 Dean and Harris, Inc., Lansing, Mich.
 Doenges Long Motors, Inc., Colorado Springs, Colo.
 Douthit-Sanches Pontiac, Memphis, Tenn.
 John Duffy Motor Co., Carlton, Minn.
 Dukewits Jenkins, Inc., Independence, Kans.
 Dunne Motor Sales, Plane, Ill.
 Egan Motor Sales, St. Johns, Mich.
 Endres Motor Co., Muenster, Tex.
 Eustis Motor Co., Eustis, Fla.
 Everett Ford Co., Chipley, Fla.
 John T. Fisher Motor Co., Memphis, Tenn.
 Fletcher Tractor Co., Fla.
 Ganus Motor Co., Hillsboro, Tex.
 Gengras Motors, Inc., Hartford, Conn.
 Lou Gerard Motors, Redding, Calif.
 Gerelick Motors, Inc., Omaha, Nebr.
 Gentry Ford Co., Milton, Fla.
 Gilbert Tilbury Co., McMinnville, Oregon.
 Gillis Motor Co., Torrington, Wyo.
 Gorman Motors, Jackson, Calif.
 Graceville Auto Co., Graceville, Fla.
 Grand Traverse Auto Co., Traverse City, Mich.
 Grandville Motor Sales, Grandville, Mich.
 Haines City Motor Co., Haines City, Fla.
 D. C. Hall Motor Co., Arlington, Tex.
 Reuben S. Haslam, National Stationery and Office Equipment Association.
 Heintzeiman Motors, Inc., Daytona Beach, Fla.
 Hinaman and Son, Marysville, Calif.
 Hoblit Motors, Colusa, Calif.
 Hobson Motor Co., Red Bluff, Calif.
 Horn-Williams, Dallas, Tex.
 Chuck Hutton Dodge Plymouth, Memphis, Tenn.
 Inman-Johnson Motor Co., Fla.
 International Harvester, Fla.
 Johnson Ford Co., West Memphis, Ark.
 Johnson Ford, Huron, S. D.
 Truman Jones Motor Co., Big Spring, Tex.
 Kellam-Waites, Wichita Falls, Tex.
 Kettle Ford Sales, Inc., Dewitt, Mich.
 Lakeland Ford Co., Inc., Lakeland, Fla.
 Lakeland Lincoln-Mercury, Inc., Lakeland, Fla.
 Lester Motors, Inc., Fla.
 J. C. Lewis Motor Co., Savannah, Ga.
 Long Motor Co., Gilmer, Tex.
 Lubbock Auto Co., Lubbock, Tex.
 Lutz Motor Sales, Placerville, Calif.
 Lynch Davidson Motors, Inc., Jacksonville, Fla.
 MacGregor Motors, Inc., Charlottesville, Va.
 Mack Motor Co., Topeka, Kans.
 Magic City Motor Corp., Roanoke, Va.
 Maher Bros., Dallas, Tex.
 Manning Taylor Chevrolet Co., Fla.
 Maring-Crawford Motor Co., Birmingham, Ala.
 McNary and Welter, Gary, Ind.
 McCreedy Motors, Inc., Norfolk, Va.
 McHugh Ford Sales, Alma, Mich.
 McIllwain Motors, Abilene, Tex.
 Meacham Ford Co., Senatobia, Miss.
 Moffett Motor Co., Wales, Fla.
 Morrow Motor Co., Lincoln, Nebr.

Muldon Motor Co., Pensacola, Fla.
Munroes, Inc., Fla.
Murray Chevrolet Co., Wynn, Ark.
Myers Ford Sales, Freeport, Ill.
National Dealers Council, Los Angeles, Calif.
Newell Motor & Equipment Co., Melbourne, Fla.
N. H. Niswander, Inc., Huntington, Ind.
Nobles Garage, Fulton, Ill.
Oakley Ford Co., Memphis, Tenn.
O'Connor Lincoln Mercury Co., Los Angeles, Calif.
Oldsmobile Cadillac, Union City, Tenn.
Owen Motors, Inc., Westwood, Mass.
Owl Motor Co., Winona, Minn.
Pacifico Lincoln Mercury Inc., Philadelphia, Pa.
Irving Pahl Motors, Oroville, Calif.
Panhandle Motor Co., Beaver, Okla.
Pankopf Ford Sales Co., Pittsburgh, Pa.
Panola Motor Co., Carthage, Tex.
Pearson Motors, Two Harbors, Minn.
Pegoos-Hurst, Longview, Tex.
Pierceson Motor Sales, Prophetstown, Ill.
Pleasant Hills Motor Co., Pittsburgh, Pa.
Quincy Motor Sales, Quincy, Fla.
Raymond and Anderson, Belding, Mich.
Ridout Motors, Dallas, Tex.
Tom Roach Motors, Sherman, Tex.
W. A. Russell Motors, Inc., White Plains, N. Y.
St. Francis Motor Co., Forrest City, Ark.
J. R. Schackleford-Daniel Motor Co., Breckenridge, Tex.
Schmitz Motor Sales, Stewart, Minn.
Semmes Ford, Decatur, Ala.
Silvey Motor Co., Henryetta, Okla.
Adams Simms Inc., Grosse Pointe, Mich.
Slaton Motor Co., Slaton, Tex.
Skyland Motors, Inc., Denver, Colo.
Sonju Motor Co., Two Harbors, Minn.
Spruill Motors, Inc., Great Bend, Kans.
Stark Ford Sales, Orland, Calif.
George A. Stewart & Son, San Andreas, Calif.
C. W. Starr, Inc., Pennsgrove, N. J.
Stolz Motors, Grand Prairie, Tex.
Tarbox-Gossett, Big Spring, Tex.
Texas Motors, Fort Worth, Tex.
Tike Decious Ford Dealer, Chico, Calif.
Universal Car and Service Co., Grand Rapids, Mich.
Universal Motor Co., Bismarck, N. Dak.
W & W Motors, Inc., Panama City, Fla.
W. W. Wallwork Fargo, Inc., Fargo, N. Dak.
Walton Motor Co., Cheyenne, Wyo.
Warrington Motor Co., Pensacola, Fla.
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Mr. ROGERS. We stand adjourned.

(Whereupon, at 6:15 p. m., the subcommittee adjourned.)

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